

MIKE THOMPSON

1ST DISTRICT, CALIFORNIA

COMMITTEE

WAYS AND MEANS



CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

September 18, 2006

John Tinger  
US EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Re: NPDES Permit No. CA0005241

Dear Mr. Tinger:

Thank you for the opportunity to comment on the proposed NPDES permit for wastewater discharge from the River Rock Casino in Sonoma County, California. I appreciate the time and effort you and your team have put into this project.

Comments made at the public hearing in Geyserville, particularly those offered by Sonoma County Counsel and the Executive Officer of the North Coast Regional Water Quality Control Board (NCRWQB), reinforced my own conclusion that the tribe has not provided sufficient data to adequately evaluate its application. Therefore, it would be premature to issue a permit at this time.

I am respectfully requesting that the tribe be directed to supplement its application and that a final decision on the permit be postponed until such time as the new data can be evaluated. I am also requesting that another public hearing be scheduled once the supplemental data has been provided and that the public comment period on the proposed permit be extended accordingly.

Specifically, the applicant has not adequately demonstrated that the proposed discharge channels have the carrying capacity to accommodate the amount of wastewater that could be produced by the tribe's treatment plant. Additionally, no percolation or evaporation studies were provided that demonstrate that the discharge from the channels would not impact the existing private lands. The data is also insufficient in that it does not address the potential for treated wastewater to seep or infiltrate into existing private domestic wells.

Further, I am requesting that the proposal to discharge into Stream A-1 be eliminated from the permit. According to the NCRWCB, this would constitute a discharge into an isolated water and would be a violation of the state's Basin Plan. I understand that the tribe is not obligated to follow the Basin Plan, but since they have voluntarily agreed to do so, it would be a misjudgment to grant a waiver for such an unorthodox proposal. It is simply wrong on its face for one entity to be able to use the private property of others for an open discharge channel.

I am also disappointed that neither EPA nor the tribe conferred with affected property owners on the possible impacts of the discharges through and on their property. Again, I understand there is

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John Tinger  
Page 2  
September 19, 2006

no obligation to do so, but in the spirit of cooperation and better understanding, it was an unfortunate oversight.

As you were made aware at the public hearing, the environmental impacts of this proposed permit are far reaching. With any other applicant, an environmental impact statement pursuant to the National Environmental Policy Act (NEPA) would be required to help identify, isolate and remedy potential problems before they occur. It is both reasonable and prudent for EPA to exercise its discretion and require compliance with the NEPA review process. I respectfully request that this be done before any permit is issued.

In your briefing with me in Napa, one of your team stated that it was important from EPA's perspective that this applicant be treated no differently than any other applicant. Respectfully, as a sovereign nation, this applicant *is* different. While your attorneys have expressed confidence that private citizens have legal recourse against any NPDES permit holder, there are probably an equal number of attorneys who believe just as firmly that tribal sovereignty is a shield against private suits. Since this is unsettled, the best way to protect the interests of both the tribe and neighboring land owners would be to make sure the permit is as comprehensive as possible. It is far better to anticipate problems and build in solutions than to rely after the fact on a legal remedy that may not exist.

In summary, discharge into Stream A-1 should be eliminated from consideration and any decision on this permit should be delayed until more data is provided in an environmental impact statement in accordance with NEPA and the public has had the opportunity to comment on any revisions.

Thank you for your consideration of my remarks and please call me at my Napa office if you need clarification or amplification of any of the points I have raised.

Sincerely,

A handwritten signature in black ink that reads "Mike Thompson". The signature is fluid and cursive, with the first name "Mike" and last name "Thompson" clearly distinguishable.

**MIKE THOMPSON**  
Member of Congress

MT:cd  
cc: Alexis Straus



Linda Adams  
Secretary of  
Environmental Protection

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## California Regional Water Quality Control Board North Coast Region

William R. Massey, Chairman

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Arnold  
Schwarzenegger  
Governor

October 2, 2006

Mr. John Tinger  
Permits and Standards Branch  
U.S Environmental Protection Agency  
Region IX, WTR-5  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

Subject: Comments on the Proposed National Discharge Elimination System  
(NPDES) Permit, CA0005241 for the Dry Creek Rancheria wastewater  
treatment plant

File: Dry Creek Rancheria, Sonoma County

Thank you for the opportunity to review and comment on the above-referenced permit. Overall, we believe that this is a well drafted permit that includes many requirements necessary to protect water quality and public health. The permit requires that wastewater be treated to an advanced level and it contains effluent limits for pollutants of concern. We support these requirements and, if properly implemented, we believe they should ensure a high level of wastewater treatment.

We appreciate your commitment to draft a permit that is consistent with the *Water Quality Control Plan for the North Coast Region* (Basin Plan). The permit implements Basin Plan effluent and receiving water quality standards applicable for the Russian River watershed. However, we are concerned that discharges to the watercourse identified as stream A1 are in direct conflict with our Basin Plan prohibitions. The Implementation chapter of the Basin Plan contains point source discharge prohibitions for all freshwater watercourses within the Region. In general, the prohibitions can be grouped into three categories:

- Prohibition or seasonal prohibition on discharges to major rivers and their tributaries.
- Prohibition on discharges to coastal streams and natural drainage ways that flow directly to the ocean.

California Environmental Protection Agency

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- Prohibition on discharges to surface freshwater impoundments and their tributaries.

The proposed permit describes stream A1 as not being a tributary to the Russian River. Therefore, this watercourse is considered to be a freshwater impoundment and/or tributary to a freshwater impoundment and discharges of treated wastewater should be prohibited. The permit as written would allow year-round discharges into stream A1, even when there is no flow in the receiving water. The stream would flow off of tribal lands until ultimately pooling in the channel and infiltrating into the ground. It has been reported that this stream periodically floods onto downstream agricultural lands. Wastewater discharges to this isolated stream would result in the accumulation of pollutants over time. Summer discharges would collect in the channel and may result in nuisance algal blooms and mosquito habitat. We request that the permit be rewritten to ensure full compliance with the Basin Plan.

In addition the proposed permit contains monitoring requirements intended to ensure that the treated effluent meets permit standards. We request that copies of the submitted monitoring reports be forwarded to our agency. We will keep a file of these reports that will be available for review by the public.

We request that our agency receive prompt notification in the event of any accidental spill or a discharge of effluent that would result in a risk to public health.

It appears that the Permittee will utilize chlorine for disinfection. However, the permit does not contain effluent limits for chlorine residual. Chlorine can be highly toxic to aquatic organisms even at very low levels. We request that appropriate chlorine residual effluent limits be included in the permit and that levels in discharges to receiving waters be monitored on a continuous basis.

Thank you for the opportunity to review and comment on this permit. If you have any comments or questions please feel free to contact myself or John Short on my staff.

Sincerely,



Catherine Kuhlman  
Executive Officer

100206\_JLS\_DryCreekRancheriaComments



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September 29, 2006

Mr. John Tinger  
Environmental Engineer  
Clean Water Act Standards and Permits  
United States Environmental Protection Agency  
75 Hawthorne St.  
San Francisco, CA 94105

Re: County of Sonoma and Sonoma County Water Agency Comments on the  
Proposed National Pollutant Discharge Elimination System (NPDES)  
Permit No. CA 0005241, and Request for Voluntary National  
Environmental Policy Act (NEPA) Compliance

Dear Mr. Tinger:

I am writing to submit the comments of the County of Sonoma and the Sonoma County Water Agency on the above-identified proposed NPDES permit, as well as a formal request that the United States Environmental Protection Agency (USEPA) voluntarily prepare a NEPA document before taking any further action on the same. Copies of both documents are enclosed.

As we expressed in our March 21, 2006 comments on the permit application, at the May 12 meeting with Congressman Mike Thompson's office, and at the September 7 public hearing, the County and Water Agency are deeply concerned about the proposed permit and the environmental impacts caused by the segmentation of the project proposed and implemented by the Dry Creek Band of Pomo Indians ("the Tribe").

The County and Water Agency specifically remain concerned that the record contains insufficient information to permit a meaningful public review of the proposed wastewater discharges and their likely environmental impacts. The enclosed comments identify twelve categories of missing information and analysis that are crucial to

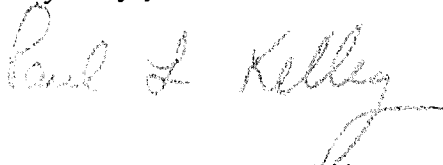
Mr. John Tinger  
September 29, 2006  
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informed participation in the permit review process. The County and Water Agency respectfully submit that the USEPA must include this information and analysis in a revised and recirculated proposed permit and proposed statement of basis before taking any further action on the Tribe's application.

The County and Water Agency also respectfully request that before it takes any further action on the application, the USEPA voluntarily prepare a NEPA document under its Policy and Procedures for Voluntary Preparation of NEPA Documents, 63 Fed. Reg. 58045-47 (Oct. 29, 1998). The County and Water Agency note that no NEPA or public review occurred with regard to the Tribe's past development phases, largely because the Tribe did not seek the instant NPDES permit at that time, and that issuance of the proposed permit could allow the Tribe to similarly implement its major expansion plans without any environmental public review. The County and Water Agency respectfully submit that the instant permit review process represents the last best opportunity to comprehensively address the large-scale and cumulative impacts of the Tribe's development, to expand public involvement and address controversial issues, and to meet the USEPA's other criteria for voluntarily preparing a NEPA document.

The County and Water Agency therefore respectfully request that the USEPA revise and recirculate the proposed permit and proposed statement of basis, and voluntarily prepare a NEPA document, before taking any further action on the Tribe's application.

Very truly yours,



PAUL L. KELLEY, Chair  
Sonoma County Board of Supervisors  
Sonoma County Water Agency Board of Directors

Enclosures

cc: Cheryl Diehm, Office of Congressman Mike Thompson  
Bob Van Ness, Esq., Alexander Valley Association

**County of Sonoma and Sonoma County Water Agency**  
**Comments on the Proposed National Pollutant Discharge Elimination System**  
**(NPDES) Permit No. CA 0005241**

**Introduction**

This document comprises the comments of the County of Sonoma and Sonoma County Water Agency on the NPDES Permit identified above, which the United States Environmental Protection Agency ("USEPA") has proposed to issue to the Dry Creek Band of Pomo Indians ("the Tribe"). The proposed permit would allow the Tribe to approximately triple wastewater output at its Rancheria, from 40,000 to 112,000 gallons per day (gpd), with an average weekend flow of 141,000 gpd and a peak capacity of 200,000 gpd. The Tribe would discharge wastewater via Stream P1 to the Russian River, which is the drinking water supply to approximately 700,000 people in the region. The Tribe also proposes to discharge to Stream A1, a surface fresh water impoundment that terminates on private property and has the potential to impact domestic wells.

Issuance of the proposed permit would remove the last physical and legal restraint on non-gaming development at the Rancheria, and would thus allow the Tribe to approximately triple the size and scope of its operations. Plans for the Tribe's major expansion, which would include a major new hotel and resort, are a matter of public record and have been published in the newspaper. A true and correct copy of the article describing the Tribe's expansion plans, and depicting them in full color, is attached hereto as **Exhibit A**.

The County and Water Agency have taken a very active role throughout this permit process, and have repeatedly expressed to the USEPA their deep concern about the proposed permit. The County Board of Supervisors submitted extensive comments to the USEPA on the permit application on March 21, 2006, County staff entered written objections to the proposed permit at the September 7, 2006 public hearing, and County and Water Agency staff have met and spoken with USEPA staff in an effort to minimize the public health, safety, and environmental impacts of any approved discharge.

The County and Water Agency appreciate the USEPA's willingness to communicate and release some additional information regarding the impacts of the proposed discharge and other issues raised by the proposed permit. The County and Water Agency further appreciate those changes that the USEPA appears to have made as a result of the County's March 2006 comments on the permit application. Many outstanding issues remain, however, and the permit should not be issued on this record. The County and Water Agency respectfully request that the USEPA provide the information and make the changes outlined below, and recirculate a revised proposed permit for additional public review and comment.

The County and Water Agency also respectfully request that the USEPA voluntarily prepare a National Environmental Policy Act ("NEPA") document before taking further action on the proposed permit. The instant permit process represents perhaps the last best chance for resource agencies and the public to review and comment upon the likely significant environmental impacts of the Tribe's tripling of its operations, as well as the cumulative impacts of the Tribe's past, present, and reasonably foreseeable future development. A true and correct copy of the County and Water Agency's formal request that the USEPA prepare a NEPA document is attached hereto as **Exhibit B**.

## **Discussion**

### **I. The Proposed Permit Should Not Be Issued on this Record.**

The public record lacks several categories of information and analysis that are essential to the integrity of the proposed permit and crucial to informed participation in the permit review process. The USEPA should not take further action on the permit until this information and analysis is compiled and/or conducted, a revised proposed statement of basis and proposed permit are recirculated for public review, and additional consultations take place between the USEPA, Tribe, County, and the North Coast Regional Water Quality Control Board.

#### **A. Removal of Stream A1 as a Receiving Water.**

Regional Water Quality Control Board staff testified at the September 7 public hearing that discharge to Stream A1 is not permitted under the Water Quality Control Plan for the North Coast Region ("Basin Plan") because Stream A1 is an inland surface water impoundment. The County and Water Agency understand that the USEPA may have already agreed that discharge to Stream A1 would violate the Basin Plan, and intend to remove from the proposed permit Stream A1's designation as a receiving water.

The County and Water Agency concur in the Regional Water Quality Control Board's determination, and request that the USEPA delete Stream A1 from the proposed permit. The County and Water Agency further submit that this change would constitute a substantial revision to the proposed statement of basis and proposed permit, and that both documents should be recirculated and subjected to additional public review and comment.

#### **B. Monitoring Requirements for Receiving Water Limitations.**

The proposed permit includes monitoring requirements for some pollutants and discharge characteristics at Outfalls 001, 002, and 003, where the treatment plant would discharge to Streams P1 and A1. (Permit at 2-5.) It would also require weekly

monitoring for pH, dissolved oxygen, turbidity, and temperature both 100 feet upstream of the outfalls, and at the Rancheria boundary. (Permit at 6.)

The proposed permit then identifies fifteen separate limitations on the Russian River and other receiving waters. (Permit at 6-7.) These include important limits on temperature, turbidity, dissolved oxygen, pH, and others necessary to protect human and aquatic health and safety. (Permit at 6-7.) The proposed permit does not appear to require any testing or monitoring to ensure compliance with these limitations, however.

The USEPA should revise the permit to require frequent and independent monitoring and testing of the Russian River to ensure compliance with these limitations. The USEPA should further require the Tribe to submit monitoring and testing results to the Regional Water Quality Control Board and all other agencies having jurisdiction over the Russian River and its resources.

The absence of monitoring and testing requirements is especially problematic with regard to temperature, as the County commented in March 2006. The proposed statement of basis correctly states that the Russian River is listed as an impaired waterbody for sedimentation/siltation and temperature pursuant to Section 303(d) of the Clean Water Act (SOB at 8), and the proposed permit therefore imposes a detailed, three-part temperature limit on discharges to receiving waters. (Permit at 7, ¶ 10.) Yet the proposed permit does not appear to require any downstream testing or monitoring to ensure that these limits are met, and that discharges do not further degrade the Russian River and the listed fish species within it.

Similarly, the proposed permit does not appear to require the Tribe to actually test and verify that its discharges would not unduly increase turbidity (Permit at 6, ¶ 2), create undesirable water discoloration, taste, or odors (*id.* at 7, ¶¶ 5-6), cause pesticide bioaccumulation in aquatic life (*id.*, ¶ 11), or violate any of the other receiving water limitations. The proposed permit should be revised to require impose frequent and independent monitoring and testing requirements, and should be recirculated for public review and comment of the same.

### **C. Water Balance.**

The County has repeatedly commented on the pressing need for some evidence that the Tribe's proposed disposal and storage scheme is actually feasible as a matter of fact. Neither the proposed statement of basis nor the proposed permit include a water balance or other information demonstrating that the Tribe's surface discharges, storage areas, and spray fields could actually accommodate the proposed 300 percent increase in treated wastewater.

This information is crucial, given the Basin Plan's significant restrictions on discharges to AI and the Russian River, the Tribe's limited reuse opportunities, and the USEPA's reduced enforcement leverage against the Tribe (as opposed to municipal agencies). The USEPA should disclose all information provided by the Tribe regarding the feasibility of its proposed discharge scheme during both typical and extreme weather years. The USEPA should also conduct an independent investigation and analysis of this question, revise the proposed statement of basis and proposed permit accordingly, and recirculate both for additional public review and comment.

#### **D. Effluent Limits for Priority Pollutants.**

The proposed statement of basis states that "[n]o data on priority pollutants is available at this time because the WWTP was not required to conduct monitoring of toxic pollutants." (SOB at 7.) This sentence should be rewritten from the passive to the active tense, to disclose that no data is available only because the USEPA has not asked for it, and the Tribe has not provided it.

The USEPA should require the Tribe to submit information identifying the priority pollutant levels in its existing effluent, including but not limited to three priority pollutant analyses, a "reasonable potential" analysis, and a laboratory analysis of hardness. This information is readily available, given that the Tribe has been operating its treatment plant for the last several years. Indeed, resource agencies routinely require this information when evaluating permit applications to discharge even tertiary treated wastewater.

The USEPA should thereafter derive appropriate priority pollutant effluent limitations, and include them in a revised and recirculated permit. The County understands that the USEPA expects that the proposed discharge may not contain priority pollutants sufficient to trip water quality standards. (SOB at 7.) It would be arbitrary and capricious to issue an NPDES permit on expectation alone, however, especially when the USEPA's hypothesis can be easily tested and verified by requesting data from the existing treatment plant.

#### **E. Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS).**

The County similarly commented in March 2006 that the USEPA should require the Tribe to disclose BOS and TSS levels in its existing influent water, rather than assuming them to be the same as "typical gaming facility" wastewater. The USEPA does not appear to have done so, even though these values are readily available and easily determined. The County appreciates the USEPA's willingness to impose BOS and TSS standards more stringent than technology-based standards. (SOB at 9, 11.) The USEPA nevertheless appears to have repeatedly refused to ask for readily available and

potentially valuable information. The USEPA's repeated refusals, and its potential issuance of an NPDES permit without this information, appear unreasonable.

#### **F. Physical Capacity of Stream P1.**

Mr. Dennis Murphy testified persuasively at the September 7 public hearing that Stream P1 can not physically accommodate the anticipated discharge, and that using Stream P1 as a receiving water would result in significant streambank erosion and other environmental impacts. These concerns will be magnified if Stream A1 is removed as a receiving water, and the Tribe increases discharges to Stream P1.

As Mr. Murphy correctly pointed out on September 7, neither the proposed permit nor the proposed statement of basis provides any information or analysis of Stream P1's capacity to accommodate the anticipated discharge. The proposed permit and proposed statement of basis similarly include no information regarding erosion impacts, except for one sentence requiring the Tribe to "design and install erosion protection measures to prevent erosion from the discharge point to receiving water." (Permit at 9.)

These measures should be designed and submitted for USEPA and public review before any further action is taken on the proposed permit. In addition, the USEPA should analyze whether the proposed measures would be effective, disclose whether the Tribe has the legal authority to enter private property along Stream P1 to implement them, and impose a condition requiring that they be replaced with equal or more effective measures should they fail or prove ineffective. A revised statement of basis and proposed permit including this information and analysis then should be recirculated for additional public review and comment before any action is taken on the permit.

#### **G. Stream A1's Percolation and Evapotranspiration Capacity.**

The proposed statement of basis discloses that the Tribe has already "conducted a study to estimate the percolation and evapotranspiration capacity of [Stream A1]." (SOB at 17.) The County specifically requested a copy of this study at the September 7 public hearing, but did not receive it. Indeed, it does not appear that any interested individual or organization has had an opportunity to review this study. If the USEPA decides to retain Stream A1 as a receiving water, it should release this study to the public, and allow an additional round of public review and comment.

Releasing the study is particularly important because, as the USEPA concedes, the study appears to have failed "to predict within a level of accuracy sufficient to demonstrate the permit requirement that no discharge contribute to sheetflow." (SOB at 17.) Moreover, as the County has previously commented, the Tribe has consistently overestimated the percolation characteristics of soils intended for discharge.

Similarly, the Tribe's proposed Adaptive Management Plan appears insufficient to ensure that the proposed discharge would function as intended and not cause sheet flow onto the existing vineyard located near the terminus of Stream A1. This sheet flow would constitute a trespass onto private land, and could adversely impact the viability of downstream lands for agriculture and residential development. The County and Water Agency thus again request that this study be included in the public record, and that the public have a chance to review and comment on it.

## **H. Analysis of Temperature Limitations.**

As noted above, the Russian River is listed as an impaired waterbody for temperature and sedimentation/siltation pursuant to Section 303(d) of the Clean Water Act. With regard to sedimentation/siltation, the proposed statement of basis includes one paragraph attempting to explain why the proposed discharge would not contain materials sufficient to increase sediment levels in the Russian River. (SOB at 11.) Although the County and Water Agency disagree with the USEPA's decision to analyze estimated rather than actual TSS levels, the proposed statement of basis at least provides some analysis of potential sedimentation and siltation impacts on the Russian River.

No similar analysis appears to exist with regard to temperature. The Tribe does not appear to have provided any data suggesting that its proposed discharges would comply with temperature limitations, and neither the proposed statement of basis nor proposed permit offer any evaluation of this issue. Given the importance of water temperature to the Russian River and the protected species within it, the USEPA should not issue any NPDES permit without analyzing the proposed discharge's likely temperature impacts.

## **I. Adaptive Management Plan.**

The proposed statement of basis and proposed permit rely heavily on a proposed Adaptive Management Plan to assuage rampant public concerns that Stream A1 can not accommodate proposed Tribal discharges without causing significant environmental impacts on neighboring, private vineyards. (SOB at 17; Permit at 9.)

The proposed Adaptive Management Plan can not carry this weight. The proposed plan is just three pages long, and does not identify how much water Stream A1 can accommodate without causing discharges onto private property. The plan instead proposes a trial and error approach that essentially guarantees that at least some overflow will occur on private property. This approach is wholly inappropriate for this proposed discharge. The USEPA should delete Stream A1 as a receiving water, or require significant modifications to the proposed Adaptive Management Plan, disclose those changes to the public, and decide on and circulate a final plan *before* issuance of any NPDES permit.



## **J. Quality Assurance (QA) Manual or Plan.**

The proposed permit would require the Tribe to develop a QA Manual or Plan that would, among other things, identify the roles and responsibilities of the participants, explain the Tribe's intended sample collection procedures and similar information, identify the laboratory that would analyze the samples, and discuss how the Tribe would perform data review and meet the USEPA's reporting and laboratory certification requirements. (Permit at 13-14.)

None of this information depends on issuance of the proposed permit, and the Tribe could prepare the require manual or plan now, and allow public review of its contents. The USEPA should require the Tribe to do so, and circulate the draft QA Manual or Plan for public review and comment before taking any action on the permit

## **K. Operation, Maintenance, and Emergency Response.**

The County has repeatedly requested that the USEPA require the Tribe to designate and identify independent persons or entities to operate and maintain the wastewater treatment plant and disposal facilities. The proposed statement of basis and proposed permit again do not identify any such persons or entities, nor provide any assurance that they will be independent, and on site or available to respond to emergency conditions.

The only information in this regard in the September 7 public hearing, when one of the Tribe's consultants obliquely referred to an alarm system, remote viewing of the plant, and a protocol for notifying concerned parties when violations occur. The proposed permit and proposed statement of basis should be revised to disclose this information in far greater detail, and to provide an analysis by USEPA staff regarding the feasibility and efficacy of the Tribe's operation, maintenance, and emergency response plans. The USEPA should specifically require that the Tribe immediately report all water quality violations to the Regional Water Quality Control Board, the County, and all other interested State and local entities.

The USEPA may object that this information (or other information identified above) is beyond the usual purview of an NPDES permit. The County and Water respectfully refer the USEPA to page 19 of its proposed statement of basis, which reveals that although the Tribe is not required to comply with State criteria for wastewater reuse on Tribal lands, USEPA staff successfully negotiated with the Tribe on this point, and inserted permit terms requiring compliance. The County and Water Agency respectfully request the USEPA to do the same with regard to the information identified above, and include permit terms establishing standards for the same.

## **L. Navigability of Stream A1.**

The Statement of Basis states that the U.S. Army Corps of Engineers has determined that Stream A1 is hydrologically isolated from all navigable waters of the United States. (SOB at 3.) The USEPA should provide some citation or documentation of that statement.

## **M. Conclusion.**

The missing information and analysis identified above demonstrates that it is premature to issue a discharge permit at this time. The health and water contamination risks to neighboring wells, as well as water sources upon which the community depends, obligate the USEPA to require the collection of additional data, conduct additional analysis of the Tribe's proposed discharge plans, and initiate a consultation process of stakeholders before it takes any further action on the proposed permit. The County and Water Agency therefore respectfully request that at a minimum the proposed permit and proposed statement of basis be revised as set forth above, and subjected to additional public review and comment, before any further action is taken on the proposed permit.

## **II. The Proposed Permit and Proposed Statement of Basis Should Be Revised.**

The County and Water Agency further suggest that the proposed permit and proposed statement of basis be modified as set forth below, to better fulfill the requirements of the Clean Water Act and ensure the safety, feasibility, and efficacy of the proposed discharges.

### **A. Removal of Stream A1 as a Receiving Water.**

The permit should excise Stream A1 as a receiving water, for the reasons stated by the Regional Water Quality Control Board, and as outlined above.

### **B. Operator Qualifications.**

The County and Water Agency have repeatedly commented that the USEPA should require a minimum level of independence and competence (for example, a particular level of wastewater operator license) for personnel operating the facilities. To its credit, the proposed permit would require operators to have "training and/or certification equivalent to the requirements of the State of California, at the level appropriate to the facility and/or system." (Permit at 15.) To obtain a license from the State of California, one must have past experience operating and maintaining wastewater treatment facilities, and not just training to do so. The County and Water Agency respectfully request that the USEPA similarly require all future operators of the instant facilities to have past experience. The County and Water Agency also respectfully

request that the USEPA require all future operators to be independent third parties, rather than Tribal employees themselves.

### **C. Flow Limitations.**

The proposed Statement of Basis improperly includes several pages that improperly and incorrectly suggest that the proposed discharge might qualify for an exception to the Basin Plan's prohibition against discharge to the Russian River between May 15 and September 30 when the discharge flow is greater than one percent of the receiving stream's flow. (SOB at 12-18.) The proposed permit properly does not rely on these suggestions, and limits flows to no greater than one percent of the River as measured at the Cloverdale USGS Gaging Station. (Permit at 3.) These suggestions in the proposed statement of basis thus appear to be superfluous at best. They should be excised from any future statement of basis.

### **D. Acute Bioassay Monitoring.**

The proposed permit would require chronic bioassay monitoring in the first, third, and fifth years of the permit (Permit at 2, 4), but does not appear to require acute bioassay testing at all. The North Coast Regional Water Quality Control Board typically requires discharges to the Russian River to conduct 96-hour static, non-renewal acute bioassay monitoring on a monthly basis during discharge. The species is usually rainbow trout with the following conditions: (1) Single sample bioassay result less than 70 percent survival; (2) Median for any three or more consecutive bioassays less than 90 percent survival. The proposed permit should be revised to require acute bioassay testing in addition to chronic bioassay monitoring.

### **E. Composite Sampling.**

Table 1 and Table 2 of the proposed permit use the word "Composite" with regard to seven separate effluent limitations and monitoring requirements, but do not define the type of composite sample being referred to. This confusion is complicated by the fact that Appendix A of the proposed permit ("Standard Definitions") references both an 8-hour "composite sample" and a "24-hour composite sample." The USEPA should revise the proposed permit to clarify the type of composite sample required for each effluent limitation.

Because the Tribe's casino is a 24-hour operation, the USEPA should specifically require that the Tribe take 24-hour flow proportional samples, and take weekly samples on different days (not always on a Monday, for example). The USEPA should also require sampling during at least one weekend per month, since the Rancheria will experience significantly higher flows and pollutant concentrations on weekend days.

#### **F. Chlorine Limitations.**

The proposed statement of basis states the USEPA "believes there is a reasonable potential for chlorine residual to be present due to the use of chlorine at the WWTP and its use for reclaimed water applications. Therefore, effluent limits for residual chlorine have been included in the permit to verify compliance." (SOB at 12.)

This does not appear to be accurate. The proposed permit includes chlorine testing in Tables 1 and 2, but states via footnote 3 that there is "[n]o limit set at this time." (Permit at 2-5.) The USEPA should revise the proposed permit to require daily testing of total residual chlorine, and to require that wastewater discharged shall not contain detectable levels of total chlorine using an analytical method or chlorine analyzer with a minimum detection level of 0.1 mg/L.

#### **Conclusion**

For the foregoing reasons, the County and Water Agency respectfully request that the USEPA revise the proposed permit as outlined above, and subject it to additional public review and comment.

**County of Sonoma and Sonoma County Water Agency**  
**Request that the United States Environmental Protection Agency voluntarily**  
**prepare a National Environmental Policy Act ("NEPA") document regarding**  
**National Pollutant Discharge Elimination System ("NPDES") Permit No. CA**  
**0005241**

## **Introduction**

The County of Sonoma and Sonoma County Water Agency hereby request that the United States Environmental Protection Agency ("USEPA") voluntarily prepare a NEPA document before taking further action on NPDES Permit No. CA 0005241. The County and Water Agency make this request pursuant to the USEPA's Policy and Procedures for Voluntary Preparation of NEPA Documents, 63 Fed. Reg. 58045-47 (Oct. 29, 1998).

The requested NPDES permit would allow the Dry Creek Band of Pomo Indians ("the Tribe") to approximately triple wastewater output at its Rancheria, from 40,000 to 112,000 gallons per day (gpd), with an average weekend flow of 141,000 gpd and a peak capacity of 200,000 gpd. The Tribe's inability to discharge additional wastewater is the limiting factor on its expansion plans, which include construction of a major new hotel and resort. A true and correct copy of an article describing the Tribe's expansion plans, and depicting them in full color, is attached hereto as **Exhibit A**.

The instant permit review process represents the last best chance to subject the Tribe's past and reasonably foreseeable future development plans to environmental review. The instant permit appears to be the only federal approval the Tribe needs to implement its major expansion plans, and is thus the only opportunity to conduct a NEPA review of those plans. Similarly, because the Rancheria is located on trust land, the Tribe likely could implement its proposed major expansion without complying with any state or local environmental review laws. The instant permit process thus may represent the only opportunity for resource agencies and the public to review and comment upon the likely significant environmental impacts of the Tribe's tripling of its operations.

Failure to conduct a NEPA review likely would lead to the segmentation or piecemealing of environmental impacts, contrary to NEPA's statutory goals and legislative intent. By its own terms, the proposed permit would remove a significant legal and physical impediment to future development, and thus should not be viewed in isolation. The proposed permit is an integral part of the Tribe's major expansion project, which has the potential to cause significant environmental impacts. The whole of this action should be subject to a comprehensive NEPA review before any part of it is approved.

Voluntary NEPA review is particularly necessary given the absence of any meaningful environmental review of the Rancheria's development projects to date. The

Tribe developed its casino gaming facilities, including massive grading and earth movement, via a grossly inadequate "Environmental Study" that did not comply with NEPA or state or local environmental law. For example, it was lack of proper analysis of soil permeability and stability as well as water balance that has forced the Tribe to pursue the instant NPDES permit, although no such impact or need was previously identified in its prior environmental work. The segmentation of the casino, parking, and other projects has prevented any comprehensive environmental analysis of the cumulative impacts of the Tribe's Rancheria development. The instant permit thus affords resource agencies and the public their first real opportunity to identify and analyze the cumulative impacts of the Tribe's past, present, and reasonably foreseeable future developments.

Staff from the Regional Water Quality Control Board testified at the September 7, 2006 public hearing on the proposed NPDES permit that they were "stunned" that no NEPA review had yet been conducted for this proposed permit. The County and Water Agency respectfully submit that it is not too late to conduct this review, and that such an analysis is imperative to fulfill NEPA's statutory goals and legislative intent.

## Discussion

USEPA policy states that the agency will voluntarily prepare a NEPA document "where the Agency determines that such an analysis would be beneficial." (63 Fed. Reg. at 58046.) The USEPA may consider the following criteria in making such a determination:

- (a) the potential for improved coordination with other federal agencies taking related actions;
- (b) the potential for using an EA or EIS to comprehensively address large-scale ecological impacts, particularly cumulative impacts;
- (c) the potential for using an EA or an EIS to facilitate analysis of environmental justice issues;
- (d) the potential for using an EA or EIS to expand public involvement and to address controversial issues; and
- (e) the potential of using an EA or EIS to address impacts on special resources and public health.

(Id.)

An environmental analysis would be "beneficial" here, and the cited factors militate in favor of NEPA review before further action is taken on the proposed permit. The USEPA's policy specifically recognizes NEPA's value in comprehensively addressing large-scale projects, and particularly the cumulative impacts of the same. The instant project is already large-scale, and is slated to triple in size if the proposed permit is issued. The Tribe's existing development has created significant adverse visual impacts by placing massive buildings and new nighttime light sources on a completely undeveloped hillside. It has caused significant adverse traffic and traffic safety impacts

that will be complicated if the Tribe succeeds in its request to serve alcohol. And it has caused significant adverse geologic, land use, noise, and other environmental impacts, all without any NEPA review.

The instant permit would allow the Tribe to triple its wastewater discharges, and thus triple its development, as outlined above. This expansion would cause significant adverse impacts to a wide variety of resource categories, including but not limited to aesthetics (as Exhibit A makes clear), traffic and circulation, land use compatibility, and many others. It would also cause significant adverse cumulative impacts in a similarly wide range of resource categories. As noted above, the significant cumulative impacts of the Tribe's Rancheria development have never been properly addressed under NEPA.

Preparation of a NEPA document would thus allow resource agencies and the public to comprehensively address the ecological impacts of the Tribe's its major expansion project, and the cumulative ecological impacts of its past, present, and reasonably foreseeable future development.

Preparation of a NEPA document would also expand public involvement and allow resource agencies to address the impacts caused by the Tribe's development, which has already created serious environmental problems both on and off the Rancheria. As noted above, very little public involvement accompanied the Tribe's past development projects, and little is likely to accompany implementation of its major expansion plans. Indeed, if the USEPA issues the proposed permit, the Tribe likely could implement its expansion plans without any further significant environmental or public review. NEPA review is therefore necessary at this stage, to ensure the public an opportunity to review and comment on the environmental impacts of the proposed wastewater discharges and likely expansion of the Tribe's operations.

The remaining criteria similarly support preparation of a NEPA document here. Preparation of an EA or EIA would allow for improved coordination between the agencies with jurisdiction over the resources impacted by the proposed permit, including the Regional Water Quality Control Board, NOAA National Marine Fisheries Service, California Department of Fish and Game, and the County. A NEPA document would also facilitate analysis of environmental justice issues, and the proposed project's likely significant impacts on the public health and the Russian River, groundwater basin, scenic hillside, and other special resources.

The County and Water Agency therefore respectfully request that the USEPA voluntarily prepare a NEPA document before taking further action on the proposed permit.

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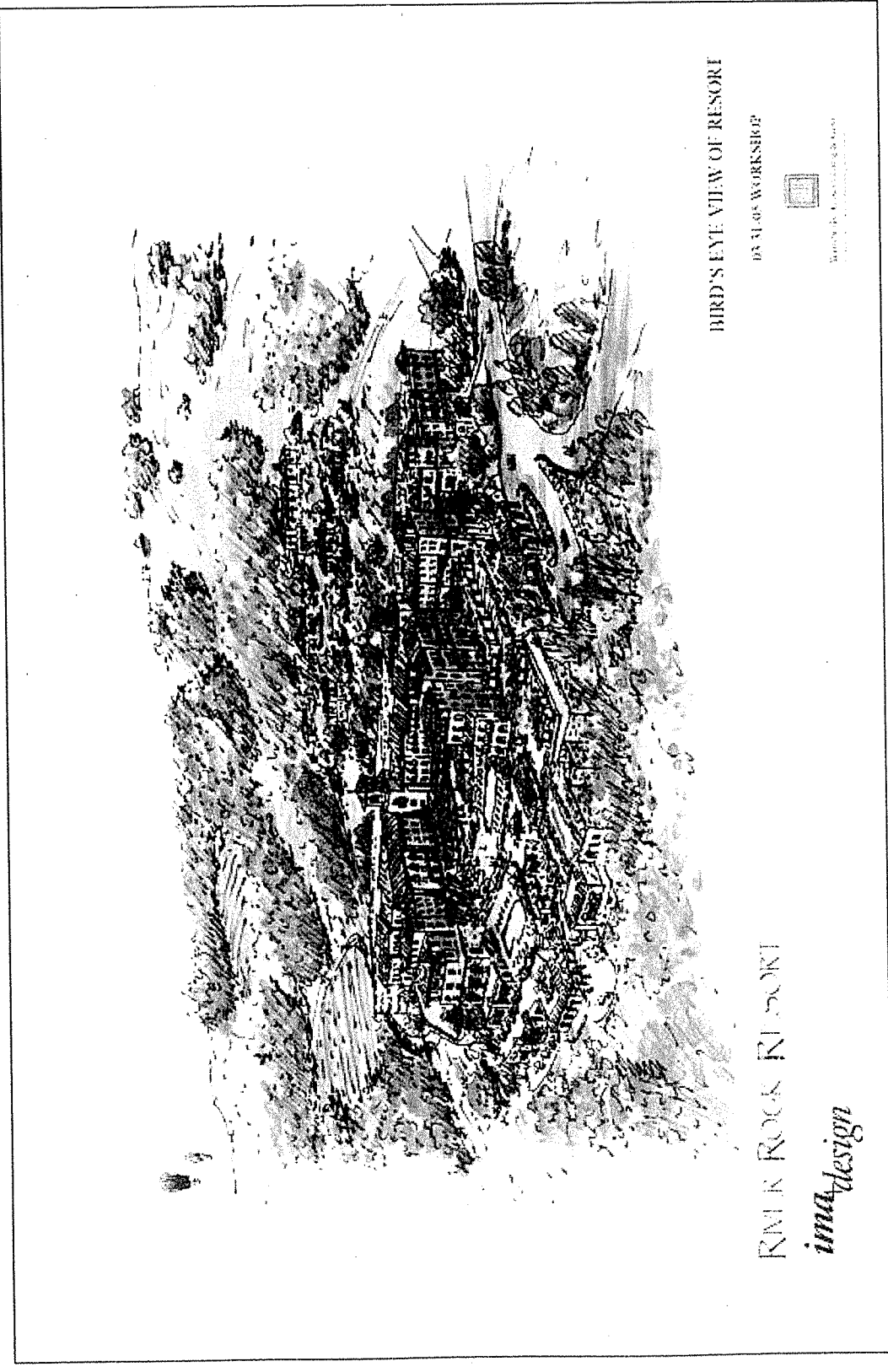
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Article published - Aug 13, 2006

## River Rock expansion a step closer

### Casino seeks approval to discharge more wastewater



By [Clark Mason](#)  
**THE PRESS DEMOCRAT**

The Indian tribe that operates River Rock casino is seeking federal approval to expand its wastewater treatment system, a first step for building its long-planned destination hotel and resort.

The Dry Creek Rancheria Band of Pomo Indians submitted plans to nearly triple the amount of wastewater processed at its casino site in Alexander Valley, indicating it intends to go ahead with a major expansion.

But the timing remains a mystery. Casino and tribal officials declined last week to say when a hotel-resort might be built, or to discuss any expansion plans. They also downplayed drawings by an architectural and design company working with the tribe that show a multistory luxury hotel, swimming pools and a permanent casino replacing the current tentlike structure.

"The tribe has always planned to convert the facility to something more," tribal spokesman David Hyams said. "They have always considered this facility interim and always wanted to do more on the rancheria. They said that at the time they opened."

"The hotel is still in a conceptual stage. Nothing's in concrete. There is no project per se," said casino manager Norm Runyan. But the wastewater expansion

plans have alarmed Sonoma County officials and Alexander Valley residents who have fought the casino since it opened in the picturesque vine-growing region in 2002.

Rep. Mike Thompson, D-St. Helena, met this week with officials from the Environmental Protection Agency to discuss concerns raised by Alexander Valley residents about the impact of the



wastewater on streams, vineyards and wells.

The tribe wants to discharge the effluent into an unnamed creek that flows into the Russian River, as well as another channel where it would evaporate or soak into the ground. The EPA has a hearing scheduled for Sept. 7 - tentatively in Healdsburg - at which the public can comment on the tribe's application. But the agency has already announced its intent to issue the permit, subject to close monitoring of the wastewater quality.

Thompson was not available for comment.

"It's one more impact coming in our direction," said Candy Cadd, whose property is next to River Rock and contains a small stream into which the tribe would discharge highly treated wastewater.

She said the permit sought by the tribe means "they are preparing for a project, either as soon as they get their permit, or sometime in the near future."

The tribe has been criticized for lack of candor dating back to statements in May 2002 that the initial grading on the rancheria was for homes, roads, water and sewage treatment systems, not a casino.

County officials said they also have had trouble getting information about the Dry Creek Rancheria's latest plans, and how they tie into the wastewater discharge permit application.

"We have concerns about the growth implications for the casino and what the tribe's expansion plans are," said Deputy County Counsel Bruce Goldstein.

He said that under the tribe's state gaming compact, it is supposed to consult with the county on any expansion plans, but has not done so.

Casino manager Runyan said the plans are "just conceptual." He said that any formal expansion plans will be subject to an environmental review separate from the wastewater permit.

Some conceptual drawings of the hotel-resort were done by Wimberly, Allison, Tong & Goo, a leading architectural and design firm that has done work around the world on a number of luxury hotels and casinos. Some of the firm's clients include the Venetian Resort and Caesars Palace in Las Vegas.

But tribal spokesman Hyams downplayed the drawings, saying they were among a number of designs and ideas floated over the past several years for River Rock.

Runyan said the delay in getting a liquor license for the casino has also injected uncertainty into the timing of an expansion.

"We're still waiting for a liquor license. It's hard to make any plans. It's a big issue for us," he said.

Both the county and casino opponents have challenged the issuance of a liquor license, saying it would lead to disaster on the narrow roads to and from the casino. County officials claim it would also increase evacuation problems in the event of a fire at the casino.

Currently, the casino averages about 2,000 patrons a day, according to Runyan, who said that increases by about 30 percent on weekends.

According to the tribe's application, its wastewater treatment plant generated a flow of 40,000 gallons per day in 2005.

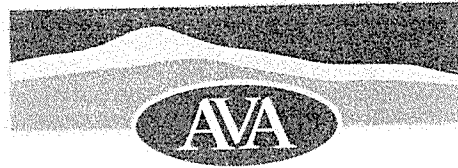
The wastewater is spray-irrigated on-site, or recycled through toilet flushing.

But the tribe said it anticipates an average flow of 112,000 gallons per day, almost three times the amount it now produces. It said that could spike as high as 141,000 gallons a day on weekends.

The tribe's inability to get rid of all the extra wastewater triggered the application to the EPA, which is required to issue a permit for any stream and river discharges.

The wastewater would be released primarily in winter, in a similar fashion to how cities in Sonoma County discharge directly or indirectly into the Russian River.

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## ALEXANDER VALLEY ASSOCIATION

September 27, 2006

US Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Board of Directors  
Alexander Valley Association  
P.O. Box 1195  
Healdsburg, CA 95448

Subject: Comments Concerning Proposed/ Draft USEPA NPDES Permit  
(CA 0005241), Dry Creek Rancheria Band of Pomo Indians (River Rock  
Casino Site)

Ladies / Gentlemen:

These comments concerning the referenced Permit are offered by the Board of Directors of the Alexander Valley Association (AVA) and supplement the verbal comments that were delivered by our representatives at the Public Hearing on September 7, 2006.

The AVA is a not-for-profit organization of more than 300 property owners in the Alexander Valley of Sonoma County, CA where the Tribe's Rancheria and Casino are situated. The proposed permit directly affects the interests of our Members because, among other things, the proposed discharges will impact surface and ground waters in the Valley as well as tributaries of the Russian River, all of which are receiving water bodies into which the proposed discharges would be made.

Our Association opposes issuance of this Permit as drafted for the reasons contained in this memorandum as well as those stated previously at the

Public Hearing by our representatives, Candy Cadd, Ralph Sceales, Pete Dayton and Bill Esselstein, all of whom are AVA Directors. The AVA also adopts and incorporates in its comments the written and verbal comments of the many other individuals and organizations that have entered objections in the record concerning shortcomings of the draft permit.

The general view of the AVA is that the proposed discharges are a bad idea. While some potential adverse impacts probably could be eliminated or mitigated if the discharges were adequately regulated, our experience with the Tribe's Casino enterprise is that even a very carefully conditioned permit poses substantial risks to persons, properties and resources off-site because the Tribe has shown from past experience it is unlikely to rigorously observe the Permit requirements. Moreover, while EPA has indicated it will not concern itself at this time with the Tribe's site development plans, it is undisputed public knowledge that the Tribe has firm intentions of developing the site as a destination resort which will generate vastly increased volumes of wastewater and storm water that are certain to greatly exceed the amounts anticipated under the present permit application. And, defoliation of the site for development already has and undoubtedly will continue to exacerbate the Tribe's ability to dispose of wastewater without imposing ever increasing impacts on its neighbors. We believe these are highly relevant factors that ought to be, but have not been taken into consideration with respect to the conditions of the draft permit.

But irrespective of those considerations, by authorizing the proposed discharges at all, the Tribe will have gained the ability, should it choose to do so, to discharge quantities and qualities of effluent that can violate permit conditions. We fear they are likely to do so unless vigorous and vigilant oversight and enforcement measures are undertaken by governmental authorities. The realities are, however, that even the most aggressive oversight and enforcement program can not prevent, nor can it fully remediate, the harmful consequences of unlawful discharges which once begun may, and often do, continue unabated for a significant time. Added to those concerns, common to any potential NPDES permit, is the circumstance that the Tribe has a long history of resisting, rightly or wrongly, any perceived impositions on its claims of sovereignty. It is well known that enforcement of NPDES permit requirements is never a simple task. In this case, it can be expected that any enforcement would be arduous and prolonged.

As discussed below, strong evidence already exists indicating that the Tribe has undertaken and is likely to continue, activities and practices on-site that are conducive to non-compliance. Understandably, this evidence, along with the Tribe's poor history of co-operation with governmental agencies in other contexts, contributes to our angst. While these justifiable concerns may not qualify as grounds for denial of the Permit, they compel us to urge in the strongest possible terms that even if the Permit does not presume the likelihood of non-compliance, it must not presume the likelihood of compliance either. At the very least, the terms, provisions, conditions and other permit requirements should be no more lenient, or any more permissive, than they would in the case of any other discharger.

Attached to these comments, and previously entered in the record at the Public Hearing, is the engineering report of our consultant, Tom Grovhoug of Larry Walker Associates, dated August 9, 2006, commenting in detail on the proposed Permit. Once again we adopt and request responses to all of Mr. Grovhoug's comments and we urge EPA to require the applicant not only to supply and disseminate to the public the information listed at the end of the report but to accept revisions to the draft Permit to eliminate the deficiencies noted. [Note: While some additional information has been provided very recently, the close proximity to the end of the comment period has precluded anything but a very cursory review, which is not a reasonable outcome.]

Furthermore, with respect to the overall character of the Permit, we say as forcefully as we can, that there should be no "free passes" on standard permit requirements. As Mr. Grovhoug's report enumerates:

- Monitoring of existing discharges for temperatures, toxicity and toxic pollutants must be required of the applicant and data from that review should be released for public review and used to perform a reasonable potential analysis and to modify the permit and fact sheet accordingly before adoption of the permit.
- An engineering analysis showing the capability of the treatment facility to comply with receiving water limitations for temperature must be furnished by the applicant.
- Language in the permit documents that appears to indicate the discharges would be exempt from the Russian River Basin Plan

prohibitions and other limitations is unquestionably presumptuous and inappropriate, and it ought to be deleted.

Even more fundamental are the following matters:

First, before the permit is issued, the applicant must be required to provide adequate engineering and scientific justification for the proposed effluent disposal scheme; in other words, a basic "water balance" analysis is essential. From the current record, it cannot be determined how much wastewater will be generated or whether it is even theoretically possible to dispose of treated wastewater as planned. When the many, many apparent fallacies surrounding the proposed discharges to Stream A1 (see below) are added to these ambiguities, the entire effluent plan, especially for summer discharges, becomes suspect:

Second, the proposed discharges to Stream A1, as pointed out by my many speakers at the Public Hearing, are decidedly problematic and ought not to be allowed. Putting aside for these purposes the very interesting question of the Tribe's evident lack of any legal entitlement to discharge wastewater onto neighboring private properties (which this Permit certainly seems to be facilitating), the proposal to use Stream A1 as a discharge channel is, frankly, bizarre.

Notwithstanding that the Permit expressly and quite properly prohibits any sheet flows from either Stream P1 or Stream A1 to surrounding property, the Tribe itself has acknowledged in earlier filings with the federal government that sheet flow is the usual and invariable outcome of waters transported through Stream A1. We call EPA's attention to the "Dry Creek Rancheria Fee to Trust Project Final Environmental Assessment" dated August 2005, which was prepared by the Tribe's environmental consultants, ESA, for the US Department of Interior's Bureau of Indian Affairs. In that FEIS, a "Wetland Delineation Report," included at Appendix C, discusses at some length the characteristics of Stream A1. Of particular interest here is Figure 4-2, which depicts very clearly the sheet flow condition that is an inherent characteristic of this watercourse. Figure 4-2 candidly demonstrates that waters reaching its terminus will be discharged by sheet flow to the surrounding vineyards located on private property south and east of Highway 128. (A copy of Figure 4-2 is attached.)

To authorize a discharge that almost certainly will result in violations of permit conditions seems nonsensical, especially in the absence of reliable hydrologic evidence that the flows can be managed effectively under all conditions of use to preclude a violation. The preliminary "Adaptive Management Plan" (April 2006 by Curtis Lam) is, according to Tom Grovhoug, inadequate for these purposes. In an email message to AVA dated September 24, 2006 (excerpt attached), Mr. Grovhoug points out the unreliability of the approach taken. He also notes the anomalous circumstance, commented on by several speakers at the Public Hearing, that allowing the Tribe to postpone the field testing required for preparation of its final AMP until after issuance of the Permit almost certainly guarantees that the prohibition against sheet flows will be violated and impacts to vineyard operations will occur.

The foregoing comments highlight the very large hole in the record of any showing that the Tribe's effluent disposal plan will be able to appropriately dispose of effluent during the summer months when discharges to P1 are precluded. These concerns become magnified when recent events on the site are considered.

During the summer, it is reasonable to assume that land application of effluent through on-site irrigation and spraying will be a very significant component of the Tribe's effluent disposal plan because of the inherent limitations on other forms of reuse, the lack of significant on or off-site impoundment capacity, the probation on discharge to Stream P1, and the already mentioned shortcomings of discharges to Stream A1. The reuse of effluent for land application depends to a great extent on the availability of landscaping and naturally occurring vegetation to absorb the water; otherwise erosion, which the Permit obliges the applicant to control through best management practices, will be encouraged with likely adverse impacts on receiving waters. [Note: AVA believes that a comprehensive storm water management and erosion control plan for new construction on the entire Rancheria site should be required by USEPA, either under this permit or under a separate storm water discharge permit.]

With this sort of scenario, one assumes that the Tribe would do all that it could to maintain the natural character of the site so as to promote absorption of land applied effluent. The actual facts are to the contrary. Attached are copies of very recent photographs which demonstrate that not only is the natural character of the site not being preserved, large portions of

the remaining natural open space are being denuded of all vegetation. As this year's rainy seasons gets underway in the next month or so, it is hardly to be doubted that erosion will occur on steeply sloped areas and that Steams P1 and A1, as well as other watercourses on the site will become conveyances of large quantities of silt and other materials detrimental to the Russian River and other downstream receiving water bodies. [Note: As stated previously, these conditions merit attention by EPA to ensure, through appropriate Permit conditions, that future development activities are conducted in conformance with approved plans to avoid exacerbation of erosion of soils that can be transmitted off-site to receiving waters.]

This occurrence reveals several important "truths" about the Tribe's Permit application:

- The probable effectiveness of the Tribe's effluent management plan must be evaluated in relation to actual conditions and in the context of the Tribe's previous and intended actions on the site. No such evaluation appears to have been done.
- The environmental consequences of the plan need to be accurately assessed. It is foolhardy to issue this Permit without regard for obvious environmental implications of known conditions. It may be one thing to exempt compliance with environmental regulations where there is no indication that significant environmental impacts are expected. It is another when those impacts are known and likely. A thorough environmental assessment must be demanded and released for public review.
- In evaluating this application, it is unreasonable to assume the Tribe can be counted on to voluntarily disclose relevant information. Factual information necessary to properly fashion a satisfactory permit cannot be based on assumptions; EPA must ensure, one way or another, that all pertinent information is available. One available tool is a comprehensive site inspection which, in the light of recent events reported above, may need to be repeated, given recent changes to conditions on site, if one was performed previously.

At the Public Hearing speakers commented on several aspects of this Permit that deserve serious consideration. We list some of them for completeness but without extensive elaboration.

- There is a reasonable probability that the discharges to Streams P1 and A1 could contain and deposit off-site materials that may, especially over time, contaminate nearby wells and/or damage adjoining vineyards (e.g.; boron deposits; ponding during non-dormant growing seasons; etc.).
- To the extent Tribal sovereignty is pertinent to this application, it is important to remember that only the Rancheria property on which the Casino enterprise is located qualifies for that status. The Tribe's recently acquired "Dugan" parcel, adjacent to but separate from the Rancheria, does not. Obviously, nearby properties owned by others but somehow being subjected to these discharges without their owners' consent, do not qualify either.
- It is an arguable environmental and economic consequence of the proposed discharges to Streams P1 and A1 that their proximity to long established premium grape producing vineyards could depreciate the value of the underlying lands to the point that these properties are no longer economically viable for their best use.
- The use of "on-call" wastewater treatment plant (WWTP) operators as a principal element of the WWTP operations plan is highly questionable. The Permit should mandate an arrangement that will ensure 24 hours per day/7 days per week responsiveness by individuals who are in immediate proximity to the site and by virtue of training and experience are qualified to make prompt, appropriate decisions in emergencies.
- The Permit should affirmatively require full compliance with all of the particulars of Title 22 of the California Administrative Code for treatment and discharge of recycled water as is expected of any other California permittee.
- Ongoing compliance monitoring and reporting for typical wastewater constituents and conditions (e.g. temperature, toxicity, etc.) are lax or even nonexistent in some respects in comparison with other similar permits. Adequate compliance monitoring must be added to the



permit for all parameters with effluent or receiving water limitations to ensure that the requirements and protections in the permit are being achieved. Absent substantial justification, not found in the record, there is no reason to excuse the Tribe from such standard permit monitoring and compliance provisions.

In closing we offer two additional comments we believe have great importance.

First, for a number of good reasons some of which are mentioned above, we have no doubt that the effectiveness of an NPDES permit issued to the Tribe is likely to be dependent on whether oversight and enforcement in support of the permit will be vigilant and robust. We join with the many other commenters who have urged EPA to take advantage of the excellent resources available through our North Coast Regional Water Quality Control Board to enhance the performance of those functions. We submit that issues of sovereignty, comity and other conditions of governmental status are not a barrier to using RWQCB capabilities as an adjunct to EPA's own resources. Federal government frequently operates through agents and with the assistance of other public agencies, and the circumstance that the agent or assistance is afforded through an entity of the State should make no difference if the lines of direction and authority are appropriately defined. A strong case can be made that it would be to the advantage and convenience of all parties if the Tribe elected to be subject to State jurisdiction for these purposes, but the lack of such consent should not preclude EPA from utilizing any lawful available resource to carry out the mandates of the Clean Water Act as efficiently and effectively as possible.

Second, we have pointed out previously the gaps in the record with respect to certain items of essential information (e.g. development plans, projected wastewater volumes, effluent disposal plan (i.e. "water balance"), water quality data, treatment capabilities, etc.). None of the information sought is extraordinary in the context of an NPDES application, nor is it unduly burdensome for the applicant to provide. Without the information, all parties are inadequately advised concerning relevant circumstances, and issuance of a permit in that state of ignorance is both unnecessary and perilous to anyone affected by deficiencies that could and ought to have been avoided. Not only should EPA require submission of the information, but reason and fairness, together with the impact of this information on the permit itself, also demand public dissemination and a reasonable opportunity for further public

comment, both in writing and at second public hearing. The public hearing process has proven to be exceptionally valuable in developing a complete and accurate record for this Permit, and we believe that the time and effort entailed in conducting a further hearing is easily justified for the same reason.

We would appreciate your timely response to these comments and request, given the urgency and importance of this matter to our association.

Respectfully submitted,

Candace Cadd  
President  
Alexander Valley Association

Copies to:

Senator Diane Feinstein  
Congressman Mike Thompson  
North Coast Regional Water Quality Control Board of the State of  
California, Attn. Catherine Kuhlman, Executive Officer  
Sonoma County Supervisor Paul Kelley  
Sonoma County Water Agency, Attn. Pamela Jean, PE  
Office of the Sonoma County Counsel, Attn. Bruce Goldstein, Esq.  
Thomas R. Grovhoug, President, Larry Walker Associates

Attachments

## MEMORANDUM

To: Ralph Sceales, Alexander Valley Association  
From: Tom Grovhoug, Larry Walker Associates  
Date: August 9, 2006  
Subject: Preliminary analysis of the proposed NPDES permit for the discharge of treated wastewater from the Dry Creek Rancheria to local surface waters

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As described in Task 1 of our proposal, I have read the proposed NPDES permit and supporting Statement of Basis and have prepared the following preliminary analysis of the issues embodied in the proposed permit for the Dry Creek Rancheria and River Rock Casino. This memorandum is divided into three sections: (1) Significant Concerns, (2) Other Concerns and (3) Document Requests. This information is provided to support our initial discussions of the proposed permit and to assist in decision making regarding the future course of action.

### Significant Concerns

Review of the proposed permit revealed the following significant concerns:

**1. Effluent Limits for Priority Pollutants.** The Statement of Basis for the proposed permit (page 7) states that no data on priority pollutants is available because monitoring was not previously required. In the absence of data, it is concluded that effluent limits are not needed for any priority pollutants. This conclusion is not well supported and is not appropriate. In fact, effluent limits for priority pollutants are common for tertiary facilities discharging to effluent dominated waters in California.

In applying for a new surface water discharge, it is the responsibility of the discharger to provide data from the existing treatment facility to allow for the evaluation of the need for effluent limits. The discharger should be required to furnish adequate, representative data to allow for a proper evaluation of the need for effluent limits for priority pollutants prior to adoption of the NPDES permit. In my judgment, this should include performance of a minimum of three priority pollutant analyses on the effluent, laboratory analysis for hardness to complement the trace metals analysis, completion of a "reasonable potential analysis" and derivation of appropriate water quality based effluent limits for inclusion in the proposed permit. Because the new discharge must immediately comply with such limits, the Statement of Basis for the proposed permit should also include an evaluation/demonstration of the ability of the proposed treatment plant to immediately comply with all effluent limits.

The above concern also applies to a number of non-priority pollutants, including, at a minimum, electrical conductivity (or optionally total dissolved solids), ammonia, aluminum, iron, and manganese, and temperature.

In summary, the permit should not be considered for adoption until the fore-mentioned work has been completed and documented in the publicly available draft permit and Statement of Basis.

**2. Compliance with Temperature Limitations.** The proposed NPDES permit includes receiving water limitations (D.10. on page 7) that limit the temperature effects of the discharge. The Statement of Basis should include an analysis that adequately demonstrates that the proposed treatment facilities can comply with these receiving water limitations. The proposed treatment facilities do not appear to be adequate to attain compliance with these effluent limits.

**3. Hydrologic Characteristics of Stream A.** On page 3 of the Statement of Basis for the proposed permit, it is stated that the US Army Corps of Engineers has determined that Stream A1 is not a tributary to the Russian River or other navigable waters of the United States. The analysis and documentation supporting this finding should be provided for public review, since it is an uncommon finding. Questions that exist are (a) whether that determination included consideration of the effects of proposed effluent discharge volumes and (b) whether the determination considered extreme wet weather rainfall and runoff conditions.

**4. Effluent Water Balance.** The spreadsheet calculations supporting the effluent water balance during extreme wet year conditions should be provided for public review. It is not at all clear whether the proposed effluent disposal/storage scheme is feasible during either typical or extreme wet years, given the proposed limitations on discharge to surface waters, the limited land area for effluent disposal and the uncertainties described in the proposed permit.

**5. Adaptive Management Plan.** The Adaptive Management Plan that is proposed to be developed after adoption of the permit should be released for public review prior to adoption of the proposed NPDES permit to ensure that the proposed discharge to Stream A1 is adequate and feasible. Inspection of the stream and downstream roadside ditch indicates that significant effluent discharges to Stream A1 will lead to flooding of private property and resulting unacceptable nuisance conditions to the property owner. Until the magnitude of flow volumes that can be discharged seasonally to Stream A1 are understood, a proper effluent water balance cannot be determined. The feasibility and reliability of the overall effluent discharge scheme must be established before an NPDES permit can be properly considered and adopted.

**6. Surface Water Discharge Operations Plan.** The operations plan described in Part II. Special Conditions. C. should be fully developed and considered prior to the commencement of discharge and prior to approval of the proposed NPDES permit. This plan must also be consistent with the Adaptive Management Plan and the effluent water balance to ensure that the proposed discharge is properly managed. The notion that this plan should be developed "on the fly", after adoption of the permit and during actual discharge events is an unusual and unnecessary approach. Typically, operations plans are developed in concert with facilities design and well in advance of the adoption of

permits. Such prior adoption is even more appropriate in this case, since the proposal is for a new surface water discharge.

7. **Antidegradation analysis.** As part of an application for a new surface water discharge, an antidegradation analysis is required to address whether the proposed discharge is consistent with federal and state antidegradation policies. The analysis of antidegradation presented in the Statement of Basis is cursory in nature and does not include analysis of the increased pollutant loadings or incremental water quality changes that will occur as a result of the proposed discharge. Documentation (including assumptions and calculations supporting a water quality impacts analysis) should be provided for public review prior to the adoption of the proposed permit.

8. **Exception to discharge limitation of one percent of Russian River flow.** On page 14 of the Statement of Basis, it is stated that EPA has concluded that the proposed discharge would meet all of the five criteria required for an exception to the one percent of flow limitation. These criteria include:

- Reliability
- Protection of Beneficial Uses
- Maximize reclamation
- Meet antidegradation requirements
- Prohibition on discharge between May 15 and September 30

For reasons stated previously regarding the absence of adequate effluent data to evaluate protection of beneficial uses, absence of effluent water balance information to evaluate whether reclamation has been maximized, and inadequate antidegradation analysis, AWA should request that the language that the discharge would qualify for an exception be removed from the Statement of Basis.

9. **Effluent and Receiving Water Monitoring.** Given the pristine nature of water quality in the Russian River watershed, the effluent and receiving water quality monitoring requirements for the proposed discharge should be adequate to ensure that violations of prescribed limits will be detected, that unacceptable impacts are not allowed to occur and that the complicated and relatively uncertain effluent management scheme is functioning properly. It is recommended that the following analyses be performed more frequently than shown in Tables 1 and 2 of the proposed permit to provide a proper level of assurance that the proposed facilities are being properly operated and are functioning as designed:

Acute and chronic toxicity	Monthly (versus every other year)
Temperature	Continuous (versus no requirement)
Priority pollutants	Monthly (versus every other year)
Chlorine residual	Continuous (versus weekly)

Hardness	Weekly (versus no requirement)
Turbidity	Continuous (versus weekly)
pH	Continuous (versus daily)

**10. Inspection and Monitoring of the Proposed facilities and operations.** Concern exists that the USEPA NPDES permit division is not adequately staffed to maintain appropriate levels of inspection and monitoring of the proposed treatment and disposal operation. It should be suggested that USEPA delegate the authority for routine inspection and monitoring to the Regional Water Quality Control Board, Region 1, who is more routinely involved and in greater proximity to adequately perform these functions.

### **Other concerns**

The following additional comments on the proposed NPDES permit and Statement of Basis exist. These comments are organized according to their occurrence in the two documents rather than according to a priority of importance, and may be deemed to be significant upon further review and discussion with AVA representatives.

### **NPDES Permit**

Page 3, footnote (1): The limit on discharge should specify that the discharge shall not exceed one percent of the Russian River flow at any time, and that, in no case, shall the discharge flow exceed the daily river flow measurement at the Cloverdale USGS gauging station. The language that would allow the one percent limit to be evaluated on a monthly average basis should be deleted.

Page 4, Table 2: Monthly average BOD and TSS limits should be 10 mg/l rather than 30 mg/l to allow compliance with Title 22 requirements.

Page 6, C.2. Second sentence: The receiving water monitoring should be performed prior to 9 AM to detect critical conditions for dissolved oxygen. The phrase "when feasible" should be deleted.

Page 6, D. Receiving Water Limitations: Language should be added to clarify the discharger's responsibility in determining causation for violations of receiving water limitations.

Page 10, Part II. Special Conditions. D, Reporting of Capacity Attainment and Planning: The permittee should be required to report within 30 days after average dry weather flow for any month exceeds 75 percent (rather than 90 percent) of the rated capacity of the treatment facility. This notification is needed to ensure that adequate capacity will be provided in advance of demand.

Page 11, Special Conditions, E. Reclaimed Water Limitations: The application of reclaimed water should comply with all of the requirements of Title 22, Division 4, Chapter 3 of the California Code of Regulations for disinfected tertiary recycled water. These requirements define water recycling criteria and address treatment requirements, acceptable recycled water uses, area use requirements, methods for testing and analysis, engineering reports and operational requirements, requirements for plant personnel, preventive maintenance requirements, operating records and reporting, design requirements, alarm requirements, emergency storage and disposal requirements and backflow prevention.

Additionally, requirements for tail water recovery or control should be included in the permit to provide physical facilities to ensure that uncontrolled runoff not occur.

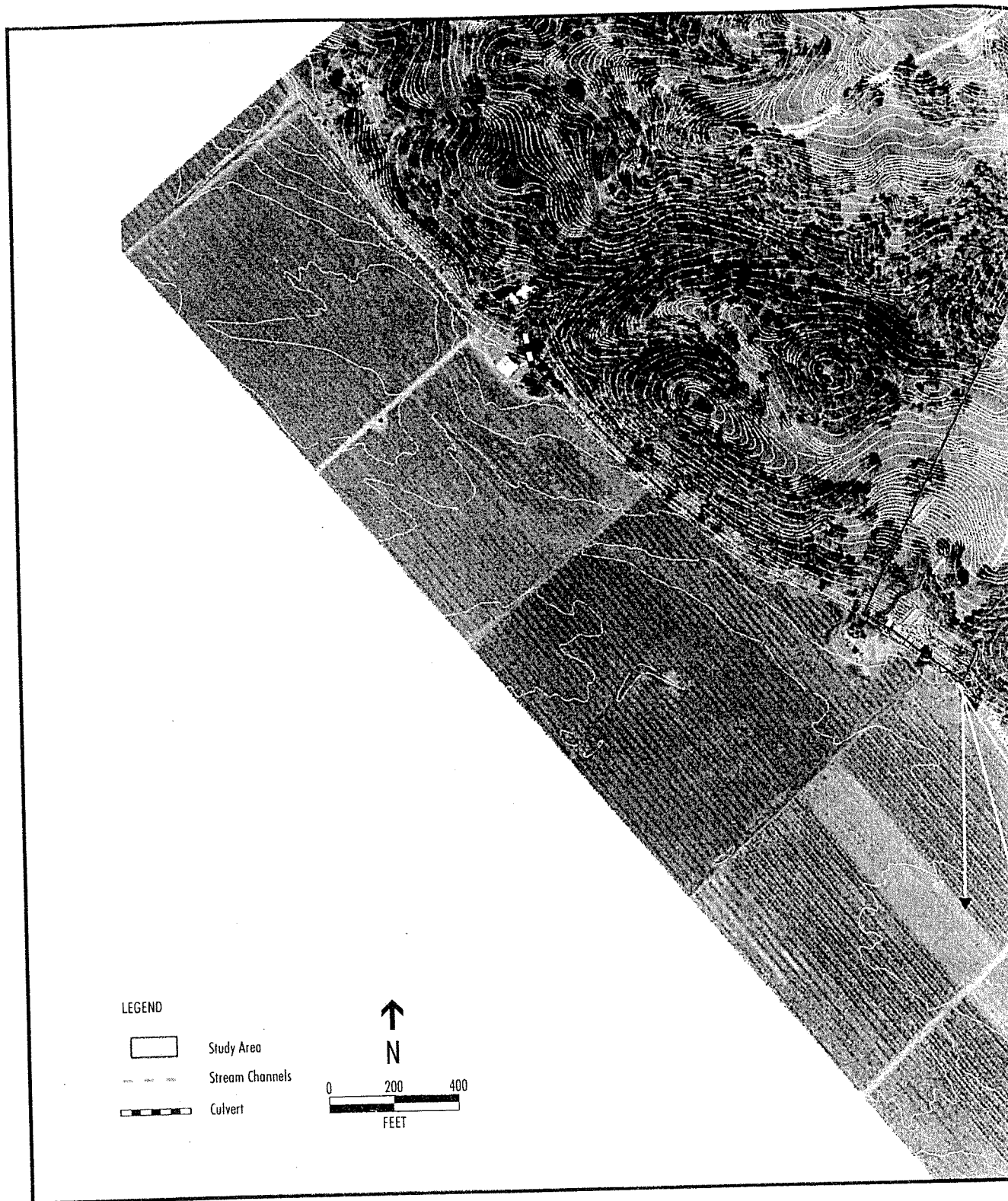
#### Statement of Basis

Page 15: The statement is made that operators are on-call 24 hours per day. Does this imply that there is no regular attendance at the treatment facility during the normal work week? The permit should require a minimum level of operator attendance at the treatment facility (e.g. 40 hours per week).

#### Document Requests

At a minimum, the following documents should be requested for review to allow proper evaluation of the proposed NPDES permit in advance of consideration of the permit for adoption.

- a. Complete description of the basis for future flow projections, including a description of any proposed new facilities that would lead to increased wastewater flows.
- b. An engineering analysis of the maximum/ultimate on-site wastewater effluent land disposal capacity.
- c. Effluent data for priority pollutants and hardness.
- d. Reasonable potential analysis and calculations for water quality based effluent limits.
- e. Proposed Adaptive Management Plan for Stream A1 prepared by Hydroscience Engineers in April 2006.
- f. Proposed Surface Water Discharge Operations Plan.
- g. Documentation for US Army Corps of Engineers finding that Stream A1 is not tributary to the Russian River.



SOURCE: Environmental Science Associates. 2004





Dugan Property Wetland Delineation / 202051 004 ■

**Figure 4-2**  
Local Hydrology

William Esselstein

----- Original Message -----

**From:** Tom Grovhoug

**To:** William Esselstein ; Bruce Goldstein ; Pete Dayton ; Ralph & Janice Sceales ; Tom Grovhoug ; Candy and Larry Cadd

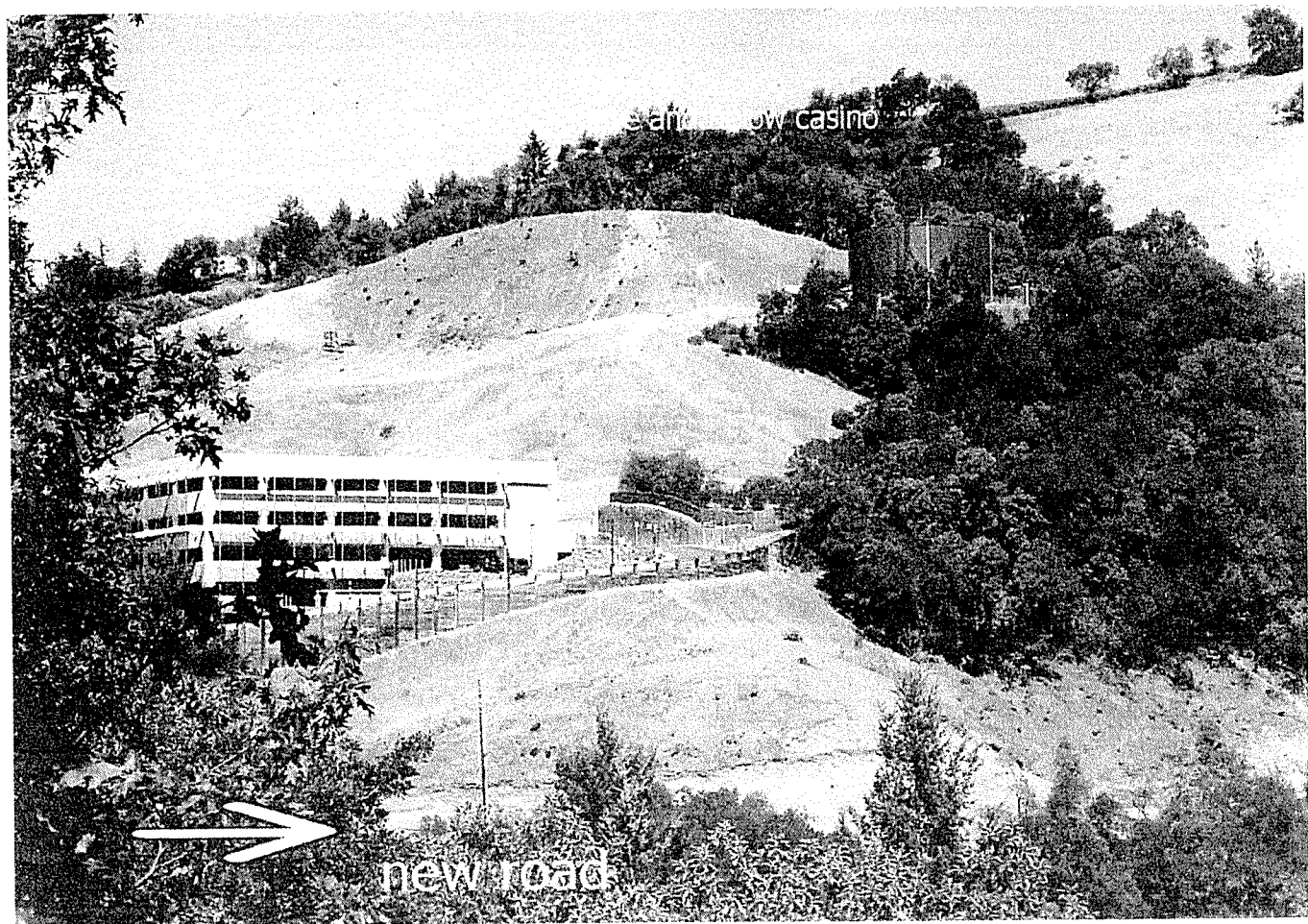
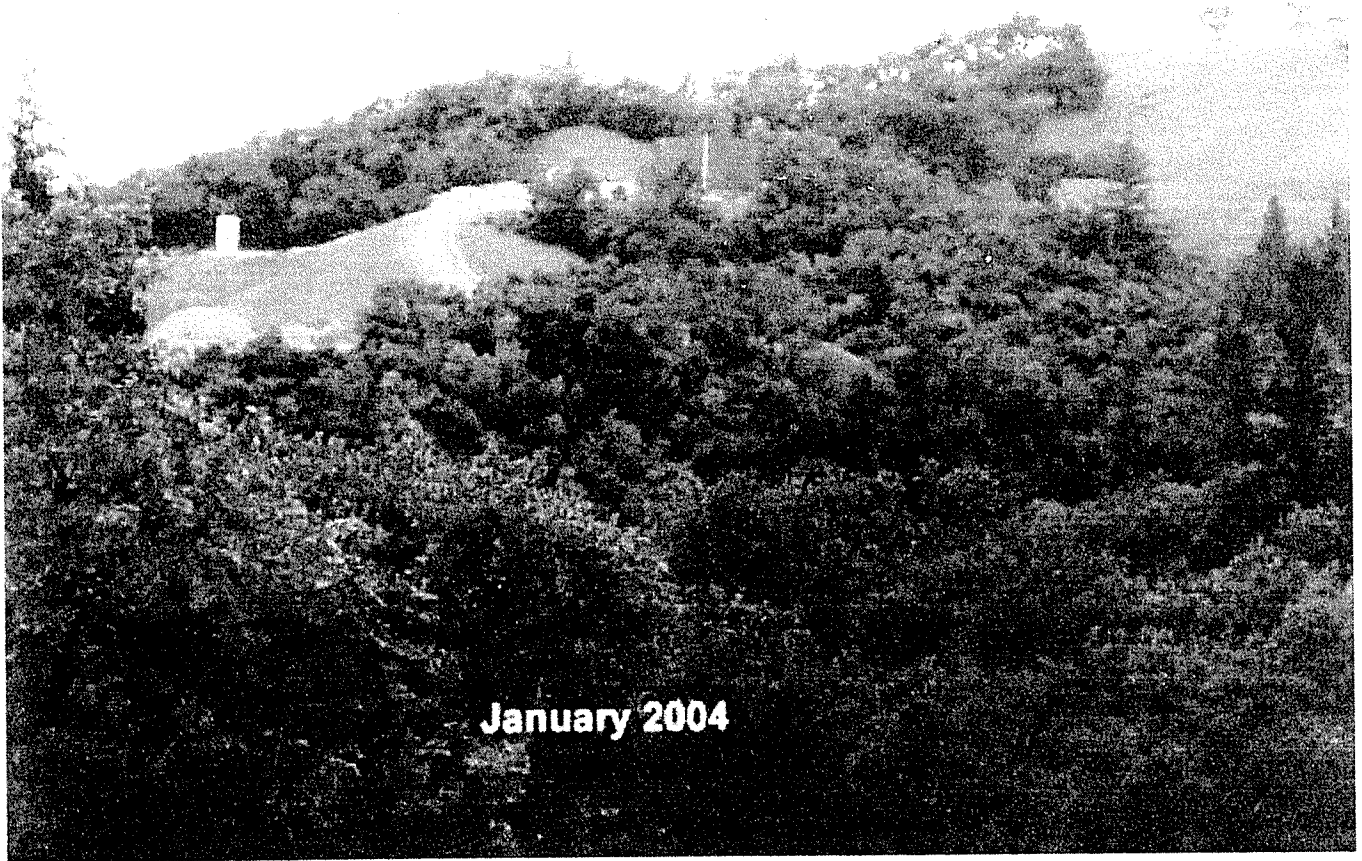
**Sent:** Friday, September 22, 2006 3:06 PM

**Subject:** RE: Document request

Bill – I reviewed the Adaptive Management Plan for Discharge to Stream A1 that was prepared in April 2006 by Curtis Lam. The empirical (i.e. trial and error) approach suggested by Mr. Lam suggests increasing discharges to Stream A1 at varying flow rates, starting at 10 gallons per minute, and monitoring over a one year period to observe whether sheet flow occurs from the roadside ditch along Highway 128. Observations, photos and rainfall data would be collected to attempt to determine a discharge rate that will prevent sheet flow from the roadside ditch.

The proposed approach is problematic for a number of reasons and would be unlikely to lead to a reliable operational scheme that will guarantee that sheet flows not occur to the vineyards. Problems with the approach include (1) difficulty in correlating discharge rates with acceptable stream flows, especially during rainfall periods, (2) the need to consider soil saturation resulting from antecedent rainfall conditions in the above correlation, (3) practical limitations that operators will encounter, including the need to monitor and predict rainfall and runoff quantities in the establishment of allowable discharge rates, etc. The likelihood that prohibited discharges to the vineyard would occur during the one year testing period has not been considered. The adaptive management plan itself would likely result in immediate permit violations and impacts to the vineyards.

Tom



005



Russian River Property Owners Association  
PO Box 1811  
Healdsburg CA 95448

Sept. 30, 2006

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX W T R - 5  
75 Hawthorn St.  
San Francisco, Ca.  
94105

Dear Sir:

It is absolutely appalling to realize that in these United States the favoritism you have shown to River Rock Casino exists!

To grant a waste water discharge permit, as you are proposing, bypassing the required process is very questionable. Would you do the same for another private enterprise or municipality? I am sure you would not. Therefore I urge you to be fair to our community and require River Rock Casino to follow the same requirements that you would impose upon any other organization.

What little information you have been supplied with is both inadequate and inaccurate. Among other deficiencies, the character of stream P1 has not honestly described. This should be studied by an honest and disinterested biologist.

On behalf of the 125 members of the Russian River Property Owners Association I urge you to be fair to our community and require this process to start over again and this time follow standard practices.

Thank you for your consideration, sincerely,

A handwritten signature in black ink, appearing to read "Alvin R. Cadd". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alvin R. Cadd  
President

10/2/2006

006

# **Stand Up For California!**

**"Citizens making a difference"**

standupca.org

P.O. Box 355  
Penryn, CA 95663

October 2, 2006

US Environmental Protection Agency  
Region IX, WTR-5  
Attn: Tinger.John@epamail.epa.gov  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Board of Directors  
Alexander Valley Association  
P.O. Box 1195  
Healdsburg, CA 95448

**RE: Comments Concerning Proposed/ Draft USEPA NPDES Permit (CA  
0005241), Dry Creek Rancheria Band of Pomo Indians  
(River Rock Casino Site)**

Ladies / Gentlemen:

Stand Up For California is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs and the state lottery. We have been involved in the ongoing debate of issues raised by tribal gaming and its impacts for nearly a decade. Since 1996, we have assisted individuals, community groups, elected officials, and members of law enforcement, local public entities and the State of California as respects to gaming impacts. We are recognized and act as a resource of information to local, state and federal policy makers.

Stand Up For California wishes to make comment on the Draft USEPA NPDES Permit for the Dry Creek Rancheria Band of Pomo Indians at its River Rock Casino Site. The jurisdiction of the Environmental Protection Agency (EPA) over the issuance of

NPDES permits in "Indian County" is more than questionable in California due to unique federal law establishing Reservations and Rancherias. Please give the following jurisdictional limits your serious consideration.

### CHALLENGING ISSUANCE OF THE NPDES PERMIT

It is acknowledged that EPA generally has jurisdiction over the issuance of NPDES permits in Indian country. However, the Dry Creek Rancheria land does not meet the statutory definition of Indian country because it is not a "reservation" as a matter of federal law, specifically the California Indian Reservation Act of April 8, 1864, 13 Stat. 39 ("1864 Act"). The 1864 Act is commonly referred to as the "Four Reservations Act" because it limited to four the number of Indian reservations that could be established within the State of California at Section 2:

*SEC. 2. And be it further enacted,* That there shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of said state, to be retained by the United States for the purposes of Indian reservations \*\*\*

EPA's Regional Counsel's office has advised that the term "Indian country" for EPA purposes is the same as that found in 18 U.S.C. § 1151, which provides as follows:

Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country,' as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The Rancheria is not a reservation by virtue of the 1864 Act. Moreover, it is not an Indian allotment nor is it a "dependent Indian community."

The term "dependent Indian community" is a codification of a line of Supreme Court cases beginning with one in which the Court considered the New Mexico Pueblos, which held their land in fee simple under Spanish grants and were not formally designated as reservations. The court held that the New Mexico Pueblos were 'wards dependent upon the federal government's guardianship' and therefore were located in Indian country even though their lands were not within a recognized reservation. See *United States v. Sandoval*, 231 U.S. 28 (1913). In *Sandoval*, the U.S. Supreme Court upheld a prohibition against the introduction of liquor on the Pueblo lands, even though the lands were held in fee by the New Mexico Pueblos:



It also is said that such legislation cannot be made to include the lands of the Pueblos, because the Indians have a fee simple title. It is true that the Indians of each pueblo do have such a title to all the lands connected therewith, excepting such as are occupied under executive orders, but it is a communal title, no individual owning any separate tract. In other words, the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the Government's guardianship over those tribes and their affairs. *Stephens v. Cherokee Nation*, 174 U.S. 445, 488; *Cherokee Nation v. Hitchcock*, *supra*; *Heckman v. United States*, 224 U.S. 413; *Gritts v. Fisher*, *id.* 640; *United States v. Wright*, *supra*. Considering the reasons which underlie the authority of Congress to prohibit the introduction of liquor into the Indian country at all, it seems plain that this authority is sufficiently comprehensive to enable Congress to apply the prohibition to the lands of the Pueblos. (*United States v. Sandoval*, *supra*, at p. 48)

The Supreme Court much more recently, however, clarified the meaning of "dependent Indian communities." In *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520 (1998), the Court held that land that lost its reservation status pursuant to the Alaska Native Claims Settlement Act ("ANCSA") and was transferred to state chartered businesses wholly owned by Native Alaskans could no longer be deemed a dependent Indian community because the land didn't meet a two-part test specified by the Court beginning with *Sandoval* and subsequently codified in 18 U.S.C. section 1151.

Because ANCSA revoked the Venetie Reservation, and because no Indian allotments are at issue, whether the Tribe's land is Indian country depends on whether it falls within the 'dependent Indian communities' prong of the statute, § 1151(b). (Footnote omitted.) Since 18 U.S.C. § 1151 was enacted in 1948, we have not had an occasion to interpret the term 'dependent Indian communities.' We now hold that it refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. Our holding is based on our conclusion that in enacting § 1151, Congress codified these two requirements, which previously we had held necessary for a finding of 'Indian country' generally. (*Id.*, at p. 527.)

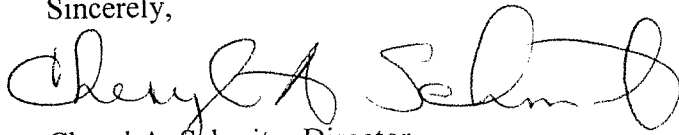
The Dry Creek Rancheria does not meet either prong of the *Venetie* test.

I should add that the "Rancheria as reservation" issue is pending in the *Amador County v. Secretary of the Interior* case, a ruling is anticipate by the end of the year. If the Dry Creek Rancheria is not a reservation, the "Indian country" treatment by EPA would not apply.

10/2/2006

In conclusion, Stand Up For California expresses serious concerns that selective application of EPA procedures if allowed to continue exacerbates growing problems and significant questions of legitimacy further deteriorating government to government relationships between Tribes, states, local governments and surrounding communities of citizens. Thank you for this opportunity to express this significant concern.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Schmit". The signature is fluid and cursive, with the first name "Cheryl" being more prominent than the last name "Schmit".

Cheryl A. Schmit – Director

Stand Up For California

916-663-3207

[schmit@hughes.net](mailto:schmit@hughes.net)

[www.standupca.org](http://www.standupca.org)



007

**Wagner&Bonsignore**  
Consulting Civil Engineers, A Corporation

Nicholas F. Bonsignore, P.E.  
Robert C. Wagner, P.E.  
Paula J. Whelan  
Andrew T. Bambauer, P.E.  
David M. Houston, P.E.  
Ryan E. Stolfus

October 2, 2006

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region 9, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**Re: Dry Creek Rancheria Band of Pomo Indians  
Proposed NPDES Permit No. CA 05241**

Dear Mr. Tinger:

On behalf of Ferrari-Carano Vineyards and Winery LLC (Ferrari-Carano), this is to provide comments on the referenced proposed NPDES Permit for the discharge of wastewater from the Dry Creek Rancheria's development. We ask that the foregoing be considered in addition to our verbal comments made during the September 7, 2006 public hearing.

One of the Ferrari-Carano properties (Sonoma County Assessor's Parcel Number 140-260-009) is located along Highway 128, and is planted to approximately 34 acres of vineyard. Ferrari-Carano has been farming this parcel for over 16 years. There is also a residence on the parcel with an existing domestic well. The proposed discharge Stream A1 flows directly into a roadside ditch paralleling Highway 128 and located on Ferrari-Carano's land. The existing ditch terminates on the shared property line of Ferrari-Carano and the Terence Proschold Trust. The proposed discharge into Stream A1 will directly impact these vineyard lands, and could potentially affect the water quality of the existing domestic well. We provided verbal comments at the September 7, 2006 public hearing, and the issues raised in our verbal comments are set forth below.

**1) Stream A1 Should be Eliminated from Consideration**

The Statement of Basis for the proposed project states that the excess flow from this ditch below Stream A1 "sheetflows onto a private vineyard". It also states that percolation and evapotranspiration studies have been done to determine the maximum amount of wastewater that can be discharged to Stream A1, without it being a contributing factor to sheetflow onto the vineyards. However, the analysis of the channel capacity and the

estimated percolation/evapotranspiration rates was not provided in the public documents for review and comment in a public process. The potential for discharge of wastewater onto private lands via Stream A1 is inappropriate and could be considered a trespass. It is imperative that the studies conducted be disclosed to the public and affected parties for their review.

## **2) Stream P1 May Not Have Adequate Capacity**

No studies have been disclosed in the public documents for review and comment in a public process that demonstrates that Stream P1 can accommodate the proposed discharge, in addition to rainfall runoff during the winter months. The Statement of Basis does not provide information with regard to the channel capacity, nor does it acknowledge the potential for erosion to the channel as a result of such additional flows. If these studies have been done, they should be provided for public review.

## **3) Project is Inconsistent with the Basin Plan**

At the September 7, 2006 hearing, the Executive Officer of the North Coast Regional Water Quality Control Board stated that the project as proposed was inconsistent with the Water Quality Control Plan for the North Coast Region (Basin Plan). The Basin Plan prohibits the discharge of wastewater to "surface fresh water impoundments and their tributaries". Stream A1 is considered a surface water impoundment as it has no outlet. Therefore, the project as proposed would be a violation of the Basin Plan.

## **4) Inadequate Monitoring of Discharge**

The Statement of Basis provides little to no information with regard to the methods for monitoring and testing wastewater discharge to ensure compliance with the terms of the proposed Permit. Monitoring and testing for compliance with permit terms should be done by an outside, independent consultant, at the expense of the project proponent. Such results should be provided to USEPA, and the North Coast Regional Water Quality Control Board (NCRWQCB). Further, the NCRWQCB should be notified immediately of any violations of the permit, as was requested by its Executive Officer during the September 7, 2006 public hearing.

## **5) Project Should Comply with the National Environmental Policy Act (NEPA)**

An environmental assessment or an environmental impact statement pursuant to the requirements of NEPA should be prepared for this project before USEPA takes any action on the NPDES permit. This process would allow environmental impacts and proposed mitigation to be identified and reviewed in a public process thereby obtaining input from those parties affected by the proposed project as well as the agencies responsible for the subject resources. The Statement of Basis indicates that approval of

Mr. John Tinger  
October 2, 2006  
Page 3

the NPDES permit would allow the Rancheria to triple its treatment plant capacity. It is our understanding that this increase capacity would lead directly to a major expansion of the Rancheria project as a whole. Therefore, the USEPA should determine that a NEPA document would be the appropriate analysis before approving the NPDES permit.

The lack of appropriate analysis and public disclosure of the impacts associated with this project, the lack of monitoring requirements for compliance with permit terms, inconsistency with the Basin Plan, and the failure to consult with affected parties, makes it inappropriate for the USEPA to grant the proposed NPDES permit for the Dry Creek Rancheria project at this time. The USEPA should prepare an environmental review pursuant to the requirements of NEPA such that the interests of the Rancheria and the public are properly identified and considered.

Very truly yours,

WAGNER & BONSIGNORE  
CONSULTING CIVIL ENGINEERS



Paula J. Whealen

cc: Donald Carano, Ferrari-Carano Vineyards & Winery  
Congressman Mike Thompson  
Catherine Kuhlman, Executive Officer, NCRWQCB  
Bruce Goldstein, Office of the Sonoma County Counsel  
Pam Jeane, Sonoma County Water Agency

FERRW011.DOC

008

**Marcia Teuschler  
3301 Feliz Creek Road  
Hopland, CA 95449  
707-744-1261**

U. S. Environmental Protection Agency  
Attn: John Tinger  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

Re: NPDES Permit No. CA 0005241

I am a property owner in Alexander Valley, directly south of the River Rock Casino. I am very concerned about the discharge of sewage into the stream just north of my property. I have a domestic water well less than half a mile from where this permit would allow the Tribe to discharge this sewage. There is Russian River under flow right there where this sewage is going to be dumped. I can not believe that anyone in their right mind would want this to happen to any property they might own. I do not live on this property right now, my daughter and her husband and my two grandsons live there, as well as my parents who live on the ranch just south of my property. This property has been in my families name for well over 60 years and we have done a very good job of taking care of it, and protecting and making it better. Now, the Tribe wants to release sewage into this area. What on earth can be good about that? When we are all trying to do a better job of protecting the land for years to come and generations to come, now we have this huge problem of sewage being turned out and onto the land. I know it is treated, but who is checking it?

I hate to see more traffic on this small country road, but would it not be better to truck this stuff to an already established treatment plant, and one that is run by a local government than to let it just go down the creek to the Russian River? I know it will be treated but still, we are allowing this stuff to go down the creek to the River, and who will monitor it? Letting the Tribe do that is sure not a great idea. Even at wineries in the area, the county gets monthly reports from the treatment ponds that wineries have to maintain.

Please use your heads and help the people of Alexander Valley protect the local environment from this madness. Do you want this to happen to the property that you live next to? I don't think so. Maybe there is enough traffic, sewage and people on this small piece of land already. Please stop this sewage madness.

Sincerely,



Marcia Teuschler  
Property Owner in Alexander Valley

009

# Field Stone

WINERY AND VINEYARD

September 25, 2006

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Re.: River Rock Casino Preliminary Wastewater Discharge Permit

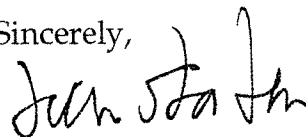
Dear Mr. Tinger:

Our family winery and vineyard well site is located downriver from the streams (referred to as A1 and P1) involved in the proposed drainage of wastewater from the expanding Dry Creek Pomo's Rancheria and proposed Hotel-Casino complex. We are concerned about this proposal as to how it will affect the quality of our water supply (it is used directly in winery production) and its environmental impacts (especially stream P1) on steelhead trout and other aquatic populations.

I am requesting that the EPA require a complete EIS before a permit is issued and that this applicant be treated in the same manner as any other applicant in Alexander Valley. In addition, I am requesting the following:

- After this study is completed the public should be given time to study it and have the opportunity to present its view at a public meeting.
- The EPA should revise the permit to require frequent and independent monitoring and testing of effluent for toxicity, and temperature controls.
- The discharge called A1 should be removed as a receiving stream. The State Water Control Board as stated that the use of this stream is in violation of the Russian River Basin Plan because it is an isolated drainage.

Sincerely,



John Staten, President





010

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger,

I am writing to request the EPA require a complete Environmental Impact Study (EIS) before any permit is issued to River Rock Casino for the purposes of discharging treated sewage above their current level. The Casino should be treated in the same manner that any other applicant would be, i.e., be required to identify and correct any potential problems *before* they occur. In addition, the public should be given time to study the EIS after it is completed as well as the ability to discuss it at a public hearing following a written comment period.

There are many reasons to believe that such a study is necessary. The State Water Quality Control board has already stated that the use of the stream called "A1" would be in violation of the Russian River Basin Plan as it is an isolated drainage. In addition, the discharge called "P1" is unlikely to be able to accommodate the anticipated discharge, resulting in erosion and other environmental impacts to the adjacent property and fish habitat. Both of these discharges, if used at the level that the currently requested permit would allow, could create severe negative impacts to private property (e.g., groundwater/domestic well contamination) without legal jurisdiction to protect that property. Finally, there is not adequate independent monitoring and testing of the effluent for toxicity, temperature, etc. required by the permit as currently requested.

The EPA is the only organization that can effectively assess the potential environmental impacts of the proposed discharge levels, determine whether the risks can be adequately managed, and reduce the permitted discharges to an acceptable level and/or put in place an adequate monitoring and testing protocol.

I look forward to your response.

Very truly yours,

Steven H. Oliver

011

Token Ranch  
2700 Geysers Road  
Geyserville, California 95441

To: U.S. Environmental Protection  
Agency

Please be advised that we in the Alexander Valley are very much against the River Rock Casino's plan to dump treated waste water in extreme amounts into a stream that eventually flows into the Russian River. Why do we have to keep contaminating this beautiful river for monetary reasons? Our grandchildren deserve clean rivers and streams! Let's stop greedy polluters.

Thank you for your  
consideration,

Laise Chapin

Sept 28<sup>th</sup> 2006

012

SEAVER THOMAS PAGE, M.D.

93 SAN CARLOS • SAUSALITO 94965

September 28, 2006

U.S. Environmental Protection Agency  
75 Hawthorn Street  
San Francisco 94105  
Attention: John Tinger

Dear Sirs,

It has come to our attention that the Pomo Tribe running the River Rock Casino are planning a giant 300 room hotel. This hotel will issue up to 200,000 gallons of sewage into small creeks that are tributaries to the Russian River. It has been suggested that the tribe will circumvent the usual and necessary environmental evaluations that are required for any other similar undertaking.

This is just another example of how these scofflaws have desecrated the Alexander Valley.

We hope that you will require the usual and adequate evaluation of this project before it is allowed.

Sincerely,

*Seaver Page*  
*Lynn Page*

Lynn and Seaver Page

DERIDERE APER VINEA  
10450 HIGHWAY 128 HEALDSBURG 95448



013

**Marge & George Grasso**

---

**From:** "Marge & George Grasso" <margeog@rcn.com>  
**To:** "George Grasso" <margeog@sbcglobal.net>  
**Sent:** Thursday, September 28, 2006 11:55 AM  
**Subject:** Fw: River Rock Casino preliminary waste water permit

U.S. Environmental Protection  
75 Hawthorne St.  
San Francisco, Ca 94105

Attn: Mr. John Tinger

Subject: River Rock Casino preliminary wastewater permit

Dear Sir:

As landowners in Sonoma County for almost thirty years we request that you apply careful consideration in your review of the damage that will be done to private property as well as the general environment. The potential Damage to the ecosystem, the general economy of Sonoma and more specifically, The Alexander Valley will be enormous.

We are requesting the EPA to require a complete EIS before any permit is issued. After the study is completed the public should be given time to examine it and the ability to comment at a public hearing.

We are certain that other letters will be received on this very sensitive issue and while the Camels nose is already under the tent as regards to gambling in the state of California we believe that there should be limits to the encroachments on private property.

Sincerely:

*Marge & George Grasso*

Mr. And Mrs. George Grasso  
425 Edgewood Rd  
San Mateo, California, 94402

014

Karen Dean Abbe  
2445 Westside Road  
Healdsburg CA 95448

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco , CA 94105-3901

Dear Mr. Tinger:

I am concerned about the proposed plan for the treated sewage discharge of the River Rock Casino. In my opinion the Environmental Protection Agency's proposed permit is not yet ready for adoption. There must be a full environmental impact study done before this permit is issued.

As it stands now the plan may permanently change the future of our land, streams and the Russian River. There has been inadequate study of the impact of this plan in regards to the possible contamination of farmland as well as the many thousands of people who depend on the Russian River for drinking water and their livelihood.

The primary creek into which the casino wants to dump its treated sewage flows through private property, not tribal land. From there it flows into the Russian River. This stream is a habitat for endangered steelhead trout. In the summer and sometimes into December there is no flow in the creek, only pools where the fish live.

The plan as now written does not state effluent limits for toxicity or toxic pollutants. The EPA would monitor the treated sewage for these contaminating elements only once every 24 months. Nor are there any requirements for cooling the treated sewage. Santa Rosa has to build 5-story cooling towers before it can release its effluent into the Russian River. I believe the Casino should be treated in the same manner that any other applicant would be. They should be required to identify and correct any potential problems before they occur.

Respectfully yours,

*Karen Dean Abbe*

Karen Dean Abbe

015

September 26, 2006

John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

RE: River Rock Casino Wastewater Discharge Permit

Dear Mr. Tinger,

I am a member of the Alexander Valley Association as well as a property owner in Alexander Valley. I am writing this letter to strongly oppose the River Rock Casino's preliminary wastewater discharge permit. With this permit, River Rock Casino will be allowed to discharge treated sewage into two streams in the Alexander Valley area.

The result of this wastewater discharge will have definite negative impacts to the private property in this area without legal jurisdiction to protect this property. It would also result in erosion and other environmental impacts to the adjacent property and fish habitat that Alexander Valley and other areas have worked so hard to protect.

The River Rock Casino needs to follow state water quality standards and I am requesting that the USEPA revise the proposed permit and subject it to additional public review and comment.

Regards,

James Family  
Private Property Owners, Alexander Valley

Michael Farrell  
Carole Farrell  
9800 Highway 128  
Alexander Valley

To: EPA Hearing Officer.  
Ref: Dry Creek Rancheria

Once again the River Rock Casino is peeing on our shoes and telling us it's just April showers here in Alexander Valley. The Casino represents the absolute epitome of the sort of things the EPA was created to prevent. The EPA should not even be entertaining the idea of allowing these carpet baggers to dump their sewage into our streams. If they build the hotel they are planning, it will be the equivalent of a small city, clinging to a hillside, dumping filth on the valley below. Those monstrous parking garages they erected on the hill overlooking our bucolic valley are an insult to the very notion of environmental protection.

The Casino has pretty much ruined Alexander Valley. Its ugly buildings pollute the scenery. Thousands of cars and buses attracted by the casino are polluting the air and causing traffic congestion on our narrow back roads. The problems will multiply with approval of the sewage discharge.

Please, in the name of common sense and Environment Protection, turn down this NPDES permit for Dry Creek Rancheria.

Michael Farrell      9-21-06  
Michael Farrell      Date

Carole Farrell      9-21-06  
Carole Farrell      Date

4811 Kipling Drive  
Carmichael, CA 95608

017

Mr. John Tinger  
CWA Standards and Permits Office  
United States Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901  
Via E-mail: Tinger.John@epa.gov.

RE: Proposed Federal Waterways; proposed NPDES permit No. CA 0005241

Dear Mr. Tinger:

As mentioned in my oral comments at the hearing conducted on Thursday, September 7th, my family and I are the owners of a parcel of land just west and north of the tribe's lands which include the Dry Creek Rancheria. Our property encompasses almost all of the stream channel described as A-1 as well as the land over which approximately 400 feet of drainage of effluent would flow pursuant to the proposed permit before reaching the main streambed that flows down to Highway 128. The area of most concern is the discharge point 002 in Channel A-1 as referred to in certain studies conducted by the Dry Creek Rancheria. In fact, there isn't a channel that starts on the tribe's property or at the property line. There is a swale that picks up runoff storm water from a small hill on the tribe's acquired property to the south (not part of the original reservation lands). The proposal is to divert treated effluent to this point 002 and then let it run across our property until it makes its way into the streambed.

We do not have any agreement with the tribe for an easement to carry their additional effluent across our southern property line to get to the streambed on the other side of our property to the north. Natural drainage is one thing but liquids disposal from a commercial operation is another and we would consider this a trespass if the permit is granted for A-1 discharge. Due to all the unregulated construction activity by the tribe over the last several years there is a serious question as to whether there is any natural drainage still occurring on tribal lands in relationship to our property.

Our steep-sloped property is highly susceptible to erosion and has also had recent landslide activity. These conditions would be aggravated by the proposed permitting of drainage across our property.

In short, the tribe simply has no authority to use property it doesn't own for its effluent disposal from its commercial operation upslope. We view the proposed permitting as presently proposed to be a blatant trespass. In addition, the proposed drainage via Stream A-1 would reduce the use and enjoyment of our property and significantly increase erosion and landslide conditions. We request that you please remove Stream A-1 from the permit application.

Sincerely,



Jerry W. Reedy  
Property Owner    APN 140-260-002

JWR/mm

US Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901  
Attn: John Tinger

September 26, 2006

018

RE: River Rock Casino's Preliminary Wastewater Discharge Permit

Dear Mr. Tinger,

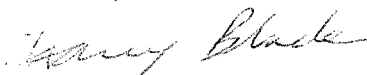
Please use this letter as a substitute for your comment form handed out at the meeting which took place on September 7, 2006 at Geyserville High School, in Geyserville regarding the above mentioned permit.

In addition I would like my name added to any mailing list for future notifications regarding any issuance, purported changes and or denials of this or any future permit being sought by the River Rock Casino.

My comments are as follows:

1. The A-1 discharge creek/ditch does not start on the Rancheria. In addition, it flows directly onto private land and not into the Russian River. How can this be water of the United States?
2. P-1 creek does not run water year round so the wastewater can not reach the Russian River. It will end up leaching into the soil and into the ground water of private property owners.
3. Who will be inspecting the wells and the soil in the area that will be affected by the waste water discharge onto private property? Will it be the EPA? The Rancheria? The property owner?
4. Who will be held liable for damages due to wastewater leaching into our drinking wells, agricultural wells, as well our land? It has been made quite clear by the Rancheria that they are a sovereign nation and are not bound by the laws of the United States.
5. What recourse will the property owner have when their well or soil becomes contaminated? Making the Rancheria pay a fine to the US Government or State agency does not compensate the property owner for their loss of the use of a well or wells, as well as their land due to contamination by the waste water discharge.
6. When the Rancheria was sited for fire safety hazards by the Sonoma County Fire Marshall they refused him access to the property to complete subsequent inspections under the guise of being a Sovereign Nation. What policies will you implement and enforce to assure that this will not be the case with the EPA if the Rancheria is found to be violating the permit restrictions etc...? Fines? – I see this as just another cost of doing business and not as a deterrent!
7. I request that the USEPA revise the proposed permit and subject it to additional public review and comment.

Sincerely,



Harry Black  
4849 Hwy 128  
Geyserville, CA 95441  
(707) 433-4826 or hlnblack@sonic.net

019

Summer Tompkins Walker  
2711 Scott Street  
San Francisco, CA 94123

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

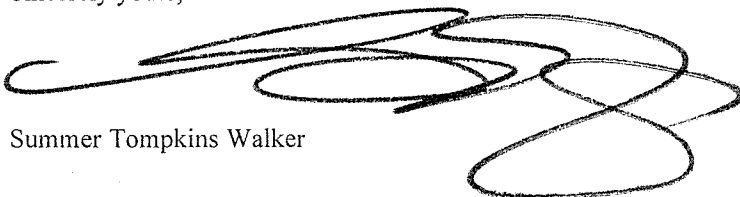
I am writing to request the EPA require a complete Environmental Impact Study (EIS) before any permit is issued to River Rock Casino for the purposes of discharging treated sewage above their current level. The Casino should be treated in the same manner that any other applicant would be, i.e., be required to identify and correct any potential problems *before* they occur. In addition, the public should be given time to study the EIS after it is completed as well as the ability to discuss it at a public hearing following a written comment period.

There are many reasons to believe that such a study is necessary. The State Water Quality Control board has already stated that the use of the stream called "A1" would be in violation of the Russian River Basin Plan as it is an isolated drainage. In addition, the discharge called "P1" is unlikely to be able to accommodate the anticipated discharge, resulting in erosion and other environmental impacts to the adjacent property and fish habitat. Both of these discharges, if used at the level that the currently requested permit would allow, could create severe negative impacts to private property (e.g., groundwater/domestic well contamination) without legal jurisdiction to protect that property. Finally, there is not adequate independent monitoring and testing of the effluent for toxicity, temperature, etc. required by the permit as currently requested.

The EPA is the only organization that can effectively assess the potential environmental impacts of the proposed discharge levels, determine whether the risks can be adequately managed, and reduce the permitted discharges to an acceptable level and/or put in place an adequate monitoring and testing protocol.

I will look forward to your response.

Sincerely yours,



Summer Tompkins Walker

I am very concerned about the  
environmental impact of this project!  
I hope you will take the necessary  
steps to thoroughly investigate before  
making a decision. Thanks -

Brooks Walker III  
2711 Scott Street  
San Francisco, CA 94123

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

I am writing to request the EPA require a complete Environmental Impact Study (EIS) before any permit is issued to River Rock Casino for the purposes of discharging treated sewage above their current level. The Casino should be treated in the same manner that any other applicant would be, i.e., be required to identify and correct any potential problems *before* they occur. In addition, the public should be given time to study the EIS after it is completed as well as the ability to discuss it at a public hearing following a written comment period.

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The EPA is the only organization that can effectively assess the potential environmental impacts of the proposed discharge levels, determine whether the risks can be adequately managed, and reduce the permitted discharges to an acceptable level and/or put in place an adequate monitoring and testing protocol.

I will look forward to your response.

Sincerely yours,



Brooks Walker III



021

October 1, 2006

John Tinger  
US EPA Region 9  
75 Hawthorne Street  
San Francisco, Ca 94105

Larry Cadd  
3650 Hwy 128  
Geyserville, Ca. 95441

Re: NPDES Permit No. CA0005241

Dear Mr. Tinger:

I am a member of the Proschold Family Trust, and as such, a property owner bordering the Dry Creek Rancheria, the location of River Rock Casino, Sonoma County, California. Our land consists of a 305 acre parcel southwest of the Rancheria. Access to the Casino is across our land. The NPDES permit to discharge treated wastewater into the headwaters of two drainages is of special concern since both streams terminate and/or run across our land. Our land is used to farm premium wine grapes and a necessary component of that operation is water of suitable quality, and soil conditions conducive to normal farming practices.

At the public hearing held in Geyserville comments by Sonoma County Counsel and the Executive Officer of the North Coast Regional Water Quality Control Board supported my personal belief that the permit should not be issued until further studies and data were provided.

At this time I would ask that the EPA include the property owners to be directly involved in the permit process, require the Tribe to perform further testing, share the data, develop Adaptive Management Plans in advance rather than after the permit is issued, eliminate Stream A1 from use altogether, and provide guarantees to the private property owners, of no negative impact for use of Stream P1, and to guarantee that over time the use of our land cannot be considered for conversion to "trust lands" as occurred on the access road to the Casino.

## Background

In 1965 Margaret Drake (grandmother) granted an easement (copy attached) to the Bureau of Indian Affairs for the sum total of \$1.00 to allow Indians living on the Rancheria access to their homes. Margaret gained no financial improvement to the ranch for this grant. In 2004 when it became imminently apparent that casino access would run across our land a suit was filed in Federal Court against the Bureau of Indian Affairs seeking to determine the allowable extent of expansion of the easement.

The Dry Creek Band of Pomo Indians intervened, succeeded in convincing both the district court, and the court of appeals that a colorable claim had been made as to trust status of the roadway and the case was dismissed for lack of jurisdiction (decision copy attached).

The land has never gone through the fee to trust process; it was simply used by an Indian Tribe over time. We continue to hold the deed to the land, *pay the property taxes*, and suffer the multiplicity of problems arising from general public access.

To date we have had two wildland fires set along the road by careless smokers. The Tribe seeded the roadside and left tall grass at the edge of the asphalt. We now have to apply herbicides to the seeded area at our own expense. Fences have been knocked down many times by auto accidents on our land along the easement, we are not informed nor are any repairs made. We no longer use the easement road to transport our crops because the traffic is unsafe (more so than on the state highway). Sonoma County has a code violation against our land for street lights and an illegal sign on our property installed on the easement road by the Tribe. We have had problems obtaining building permits from Sonoma County due to this infraction.

Today, the EPA is proposing to issue a permit for the Tribe to discharge treated wastewater on our land and we believe we are justifiably concerned. The Tribe has not shown cooperation in the past why should we believe they will now?

In a letter drafted by Congressman Mike Thompson to EPA Sept. 19, 2006, he writes "In your briefing with me in Napa, one of your team stated that it was important from EPA's perspective that this applicant be treated no differently than any other applicant." This applicant is a sovereign entity and as such has rights and privileges beyond those of private citizens.

Any suit brought before the EPA to correct harm done, could be tossed for lack of jurisdiction if the Tribe successfully intervened. Without a full and complete waiver of immunity, approved by the BIA, the EPA cannot guarantee protection for private property owners. We would much prefer that problems be rectified in advance, lawsuits are a waste of everyone's time and money.

To provide a balance of rights between property owners and the Tribe, this permit must be treated differently than any other permit applicant due to the special privileges afforded an Indian Tribe that supercede those of private property owners.

## Joint Comments

I am in possession of, and have read copies of comments to this NPDES Permit written by Congressman Mike Thompson (Sept 18, 2006), The County of Sonoma, and

the Alexander Valley Association. I fully concur, agree and support the comments made in those documents and wish to include those comments as my own.

In addition I have the following points of concern listed below. Some may be due to lack of understanding, or from missing data, and I feel that the EPA failed private property owners and left us out of the process.

I request to meet with you or one of your staff preparing this permit to form a better understanding of the issues at hand. The Geyserville meeting was more of a learning experience than an opportunity to comment effectively. My concerns may be diminished by a better understanding, and you might have a better appreciation for some of my concerns if we could meet and inspect the property.

### EPA Concerns

It is my understanding that the EPA has jurisdiction over the issuance of NPDES permits in Indian country and that this permit is being processed without certain levels of reviews because the EPA considers it a "Reservation".

The Dry Creek Rancheria is held in fee by the United States Government. The land is *not* held in trust for the Dry Creek Band of Pomo Indians. The land has not been through the fee to trust process, and the land is not by definition a "reservation" since the California Reservation Act allows only 4 reservations in the state.

The BIA will claim it as trust lands but there are no documents. The EPA should ensure that it has jurisdiction to issue this permit.

### Significant Property Owner Concerns

#### Stream A1

This property is being burdened with effluent to the detriment of the landowners for the benefit of the Tribe. Allowing the Tribe to discharge into this stream during the summer months directly threatens our ability to farm and could even kill some of the vineyard.

The definition of sheet flow is not included in the permit. Sheet flow typically means thin, shallow, slow moving flow over land.

Sheet flow is prohibited in this permit, but the permit falls short of requiring the land to be dry and no moisture escaping beyond the terminus of the ditch line. It is possible for sheet flow not to occur, and still have the ground saturated from underflow through the gravel in the bottom of the ditch. Compliance would be met, a mud hole would exist, and the property owner has no recourse.

A saturated ditch will result in immediate runoff from any precipitation and result in un-natural sheet flow to the vineyard even if the tribe operates as planned. In a normal spring situation if the ground is dry for a few weeks and a half to 1 inch of rain falls the ditch may run sheet flow to the vineyard but most of the water would be absorbed by the dry ditch.

If the tribe already has the ditchline at field capacity and an inch of rain falls, all of the resulting runoff that enters the ditch, including the parking structure area runoff will sheet flow into the vineyard. This will interfere with farming practices (you can't farm a mudhole) and under the right circumstances could cause disease or death of vines.

This area is already impacted by increased sheet flow due to changes in storm water runoff since construction of the casino. There is more flow in this ditch than before. The berm in the ditch running along Hwy 128 has been breached and has straw bales and sandbags supporting the edges.

The Adaptive Management Plan must be completed in advance and subjected to public comment if this stream continues to be included in the permit.

#### Stream P1

The Alexander Valley floor typically consists of an impermeable layer at about 80 feet below the surface, and 60 to 70 feet of gravel aquifer, and a layer of topsoil from none to as much as 30 feet.

Water level in wells on our property stands about 13 feet below grade. There are 3 wells along the creek, all 3 are agricultural use and one is also used for domestic water. One ag well is 200 feet from the edge of the creek, and the other two are less than 25 feet from the creek bank.

As described in the permit, Stream P1 at times disappears into the alluvium downstream of the Highway 128 crossing. Depending on the natural flow of the creek, this amounts to a direct injection project, where nearly undiluted wastewater is pumped into the aquifer. Only when there is sufficient rainfall will wastewater ever reach the Russian River. The creek dries up between storms.

It must be understood and acknowledged that this stream does not always flow to the Russian River during the permitted discharge dates.

The difference between the standing water table level and the bottom of the creek channel is 9 feet or less, since gravel has almost no moisture holding capacity, 5 gallons dumped on the surface will be nearly 5 gallons added to the aquifer. At flow rates controlled by 1% of Russian River flow any and all of the waste discharge can be released into a dry streambed.

This stream only flows to the river when the river level is elevated, which raises the water table and supports flow in the creek, or when the rainfall is heavy enough to overcome the amount that seeps out the bottom into the aquifer.

River level controls the water table level, on our other properties in Alexander Valley we have wells that reverse flow during high water events where the wellhead is below river level.

When direct injection is occurring can the EPA guarantee that the water quality in our Ag and domestic wells will not be negatively impacted? There will be overlapping times when discharge is permitted and the ag wells will be in use.

There evidently has been no testing for Priority Pollutants and as property owners we are being forced to accept unknown water onto our land. I believe this is an example of some of the "special privileges" afforded Indian Tribes, any other applicant would have the test data but the Tribe is not required to test.

Some wells drilled on the East side of Alexander Valley have been high in boron concentration and are unsuitable for use in winegrape production. Boron in water can cause accumulation in the soil and over time lethal levels for grapevines can be reached. Assurances should be made that boron is not a concern and that future water sources added to the system do not change the concentrations.

The EPA appears to have approved the wastewater for ag. reuse but does not have data to support the approval and is also assuming that the water source is not of concern. We should have been included in the permit process, the applicant *is* different and the process needs to be different, aren't others required to provide data?

Discharge flow limitations based on 1% of Russian River flow seem to be overly generous given that the maximum daily process is limited to 200,000 gallons, equal to a daily discharge rate of 138 GPM. This limitation needs to be reduced to a rate that is more in line with daily production and restricted to a rate that the creek channel can accommodate without causing flooding or erosion. The Russian River can have flow rates exceeding 15,000 cfs, why would any permit formally allow the discharge of 1% of 15,000cfs into a creek channel that cannot carry the flow? There is already and increased flow in P1 since the construction of the Casino due to runoff. There has already been evidence of erosion in the creek and recent repairs were made. (Again, without consulting with us). (photo attached)

Additional storage is planned and potentially in the future, due to unknown operating strategies, segmented permitting, lack of environmental review of the complete project; large discharge rates could be released. The permit considered for issue is blind to the future.

Discharge rates are allowed to be averaged over a month, if there are flooding or erosion concerns there are no records available to the public, no proof that it was or was not caused by rainfall. We can only estimate what is going to happen since disclosure and environmental review are not required of the Tribe and their shield of sovereignty. Although the Tribe will continue to deny their future plans, we know that the next step is a hotel/casino, but there is no proof, and there will be no review process.

If this permit is issued, limitations and restrictions need to be set forth that protect the property owners.

The creek channel downstream of Highway 128 is described as a maintained channel, devoid of vegetation. Historically this stream did not connect to the Russian River, it simply discharged onto the valley floor and would have been classified the same status as Stream A1 years ago.

In the late 1960's with the assistance of the Sonoma County Flood Control District (now the Water Agency) the existing channel was created to allow floodwaters to run directly into the river.

In early 1966 the BIA constructed a road on the Rancheria to the top of the hill currently where the Casino is located. The road construction undercut the hillside on the Rancheria below our land and caused a very large landslide. The creek was blocked on the Rancheria and when it washed through, vast amounts of silt and soil washed down the creek channel. Sedimentation of the creek channel occurred for years after until the slide stabilized and the creek washed itself clean.

The landslide scar is still visible and the 300 foot section of creek in a culvert on the Rancheria is a product of the landslide. (This section is just 50 feet upstream of the Rancheria creek restoration project.) The creek downstream of Highway 128 is channelized and square shouldered from heavy equipment cleaning out landslide debris year after year, the berm on the south side of the channel is obviously Rancheria soil. The creek above Highway 128 is home to steelhead trout. This stream supports the trout all

summer long up to the Rancheria culvert. This section maintains a minimal flow during the dry months.

- The Basin Plan allows exceptions to the 1% of River flow rule. This language needs to be eliminated. At 200,000gpd or 138 gpm there should not be any need for exceptions unless there is more planned that is not being disclosed at this time.
- Daily discharge records should be required and records should be available to the public. If for example there are no daily records available how will it be determined if sheet flow at A1 was caused by discharge or rainfall event. The permit by design creates a contentious situation. If the Tribe refuses to provide daily records to the EPA due to sovereignty, the permit should be denied. Another example of why this applicant is different.
- Receiving water limitations for 001 and 002 list 10 restrictions and uses such terms as "adversely effect" or "nuisance" but provides no definitions or measurable limitations, all are purely subjective. It is my opinion that any water discharged into A1 will create a "nuisance" (habitat for bluegreen sharpshooters vectoring Pierce's disease, a deadly threat to vineyards, along HWY 128), and that accelerated and increased sheet flow from rainfall events will "adversely affect" farming practices on our property. Directly affecting our ability to grow or sell our product which will affect us economically. This means that the Casino will benefit economically from this permit at our expense. If this permit is issued these two examples will no doubt be raised at some time in the future, how would EPA propose to mitigate these problems today?
- The EPA is not sufficiently staffed to monitor and or enforce the conditions of the permit. The Barona Tribe is operating a motorcycle track in Southern California that is an environmental wreck and the EPA stated that there were only 6 people in 4 states available to investigate the claims of wrongdoing. Is this accurate and what kind of response can be expected for this permit?
- This is my personal favorite, Stream A1 is a giveaway. Developers always request and permit for more than they intend to build so that projects can be pared down and still achieve the desired original goal. The A1 proposal is so absurd that it has to be designed into the plan as a tradeoff. The tribe is going to agree to eliminate this option and then claim that they are trying to work with the property owners but that we are just unreasonable.

Thank you for the opportunity to comment, and I look forward to meeting with you to discuss our mutual concerns.

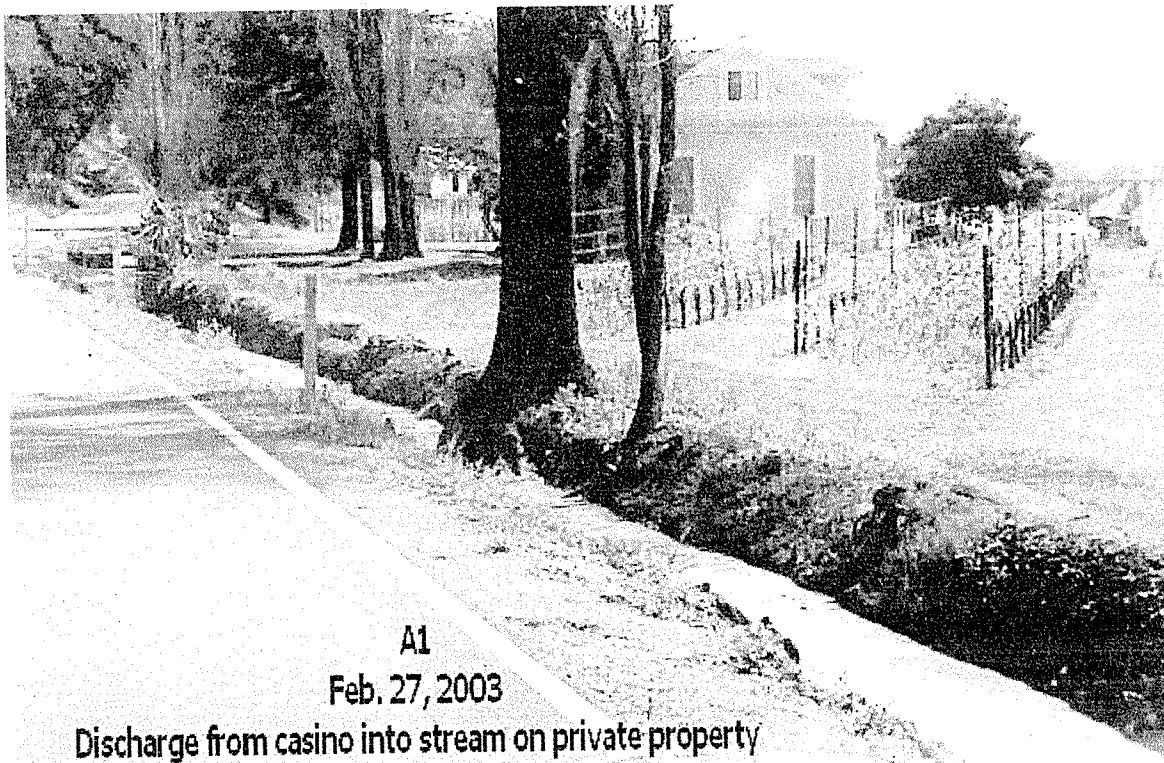
Larry Cadd



3650 HWY 128  
Geyserville, Calif 95441  
Phone (707) 479 913



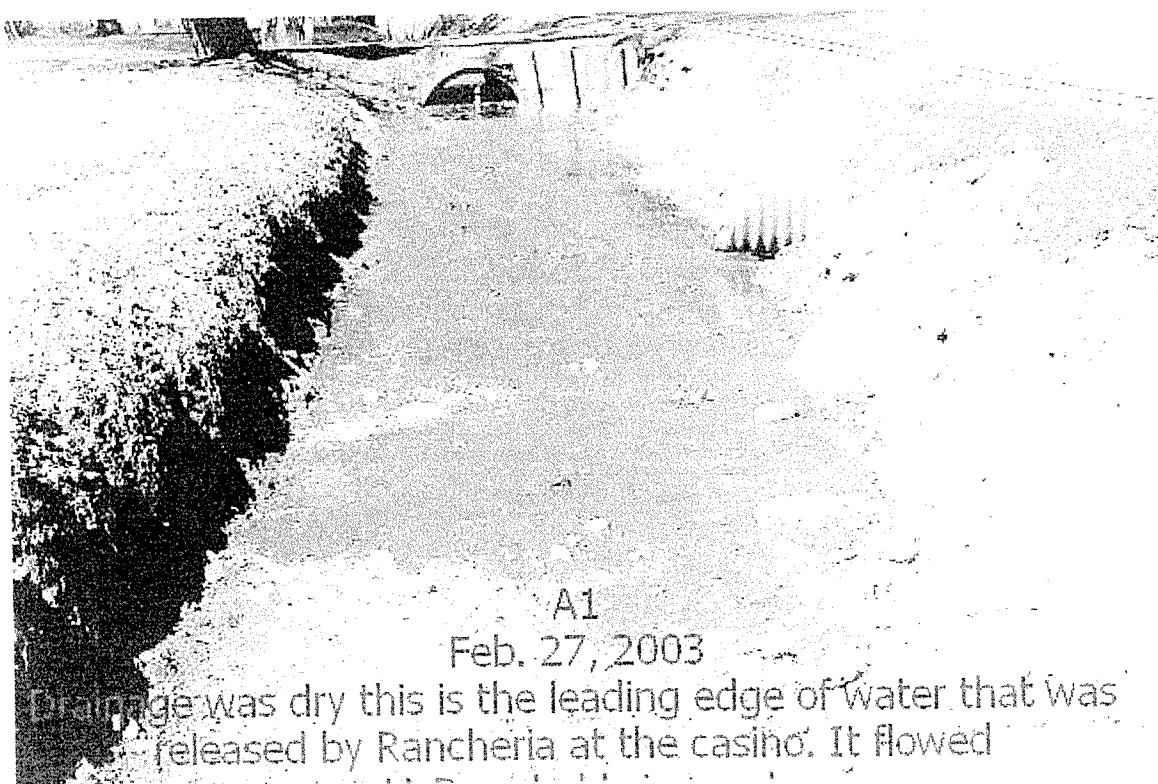
STREAM CONDITIONS DURING THE WINTER WHEN  
RELEASE OF WATER IS PERMITTED @ 1% OF  
RIVER FLOW



A1

Feb. 27, 2003

Discharge from casino into stream on private property



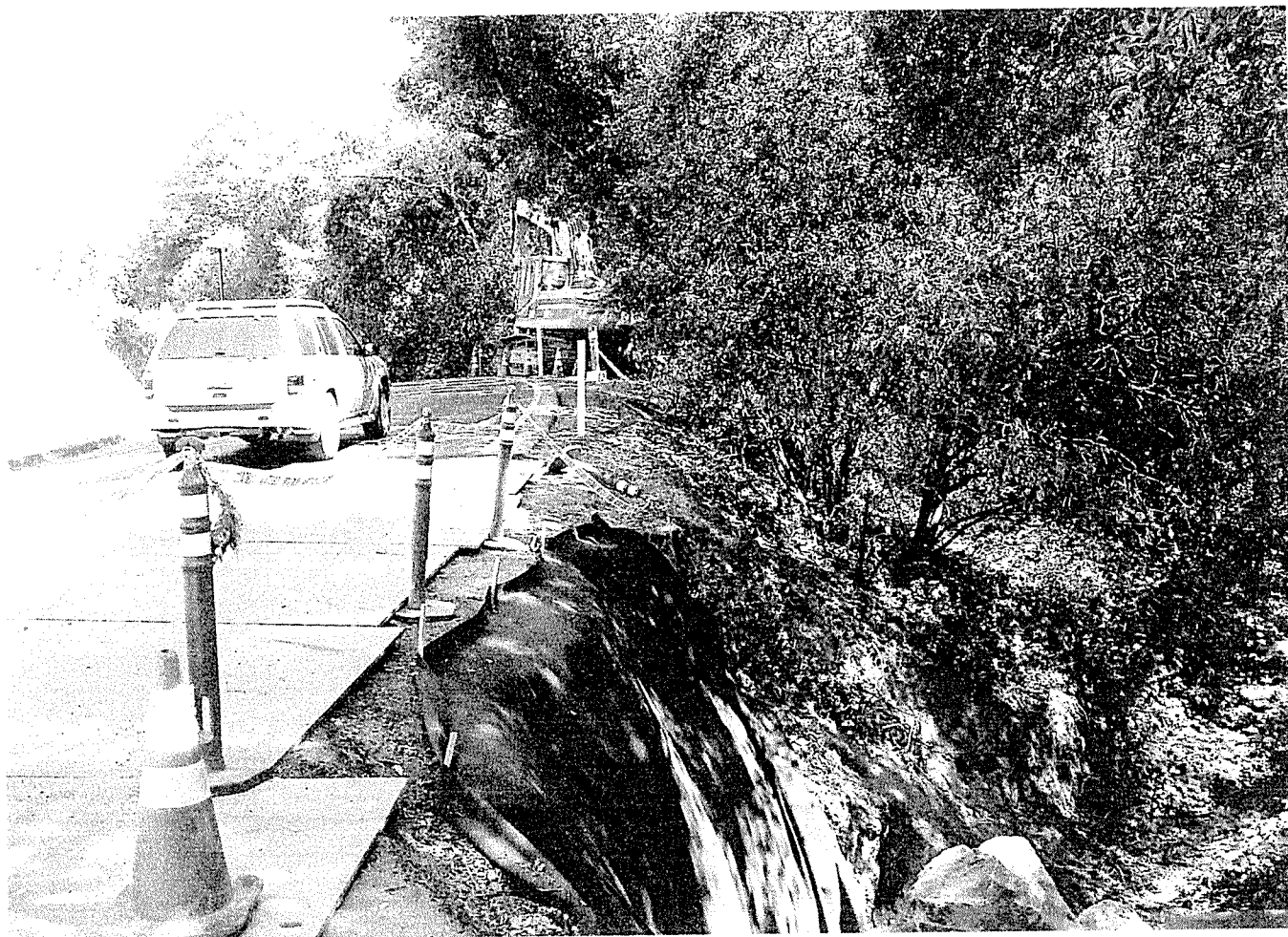
A1

Feb. 27, 2003

Drainage was dry this is the leading edge of water that was released by Rancheria at the casino. It flowed

THIS SPILL OR INTENTIONAL RELEASE FROM THE CASINO INTO A1 IS LESS THAN 100 FT FROM WHERE SEWER FLOW ONTO OUR PROPERTY WOULD OCCUR





September 06 Slide Repair



2-16-05

P1 From 128 CAVERT Toward River

E A S E M E N T

MARGARET A. DRAKE, widow

for and in consideration of the sum of (\$1.00) One & no/100 dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant to the United States, its successors and assigns, a permanent easement and right of way, for the following purposes, namely; the right to enter upon the hereinafter described land and grade, level, fill, drain, pave, build, maintain, repair and rebuild a road and or drainage way, together with such bridges, culverts, ramps, and cuts as may be necessary, on, over, under, and across the ground embraced within the right of way situated in the County of Sonoma, State of California.

Beginning at a point which is Sta. 0+28.95 on the centerline of Route S-93 and which point is N. 68° 56' 25" W. a distance of 2,291.80 ft. from a stump, which is the stump of an oak tree designated as point No. 5 on the boundary survey of Rancho Caslamayomi,

Thence from said point of beginning N. 37° 46' W. a distance of 37.90 ft.;

Thence N. 74° 44' E. a distance of 122.74 ft.;

Thence N. 31° 53' 30" E. a distance of 93.16 ft.;

Thence N. 29° 03' E. a distance of 60.96 ft.;

Thence N. 37° 22' E. a distance of 78.04 ft.;

Thence N. 53° 03' E. a distance of 80.94 ft.;

Thence N. 65° 33' E. a distance of 116.56 ft.;

Thence N. 83° 18' E. a distance of 115.55 ft.;

Thence S. 83° 37' E. a distance of 98.82 ft.;

Thence along a curve to the left having a radius of 275 ft., a distance of 239.98 ft.;

Thence N. 41° 23' E. a distance of 119.09 ft.;

Thence along a curve to the left having a radius of 275 ft., a distance of 140.79 ft.;

Thence N. 17° 03' E. a distance of 113.84 ft. to a point on the boundary of the Dry Creek Indian Reservation;

Thence S. 35° 30' E. along the said boundary a distance of 33.88 ft. to

Recorded at request of  
Bureau of Indian Affairs  
at 16 min. past 3 P.M.  
Sonoma County, California  
Herb. Snyder, Jr., Recorder  
March 8, 1965  
OFFICIAL RECORDS

Fee \$2.80

J 33470

COMPARED N D Book 2112  
Page 707

of 283.62 ft.;

Thence N. 89° 31' W. a distance of 98.82 ft.;

Thence along a curve to the left having a radius of 270 ft.; a distance of 190.07 ft.;

Thence S. 48° 22' 39" W. a distance of 128.37 ft.;

Thence S. 29° 03' W. a distance of 60.98 ft.;

Thence along a curve to the right, having a radius of 185 ft., a distance of 147.41 ft.;

Thence S. 74° 44' W. a distance of 63.82 ft.;

Thence S. 82° 14' W. a distance of 29.73 ft.;

Thence N. 37° 46' W. a distance of 44.78 ft. to the point of beginning, containing 1.816 acres.

To have and to hold the said easement and right of way unto the United States of America and unto its successors and assigns forever, together with the right of ingress and egress to permit the economical operation and maintenance of said road and or drainage ways and all incidents thereto, and the grantor hereby covenants that she is lawfully seized and possessed on this aforementioned tract or parcel of land; that she has a good and lawful right to convey it for easement purposes; that it is free from all encumbrances; and that she will warrant the title and quiet possession thereto.

The said easement to include the right to cut back and trim such portion of branches and tops of the trees now growing or that may hereafter grow upon the above described premises, as may extend over said right of way, so as to prevent the same from interfering with the efficient maintenance and operation of said road and or drainage way.

/s/ Margaret A. Drake

MARGARET A. DRAKE

STATE OF CALIFORNIA )  
COUNTY OF SONOMA ) ss:  
)

On this 8th day of March, 1968, before me,

Tom Addleman, a Notary Public, personally appeared

Margaret A. Drake known to me to be the person(s)

whose name(s) is subscribed to the within instrument, and acknowledged that (she or they) executed the same.

Witness my hand and official seal.

PFT 0005

**FILED**

FEB 20 2004

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

TERRANCE C. PROSCHOLD, et al.,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee,

and,

DRY CREEK RANCHERIA BAND OF  
POMO INDIANS,

Intervenor - Appellee.

No. 02-16655

D.C. No. CV-01-02390-SBA

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Saundra B. Armstrong, District Judge, Presiding

Argued and Submitted October 6, 2003  
San Francisco, California

Before: SCHROEDER, Chief Judge, THOMAS, and CLIFTON, Circuit Judges.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Plaintiffs appeal the district court's order dismissing their action for lack of subject matter jurisdiction under the Quiet Title Act. We review the district court's determination of subject matter jurisdiction *de novo*, *Alaska v. Babbitt*, 38 F.3d 1068, 1072 (9th Cir. 1994) (*Alaska-Albert*"), and we affirm. Because the parties are familiar with the facts and procedural history, we need not recount it here.

Although the Quiet Title Act ("QTA") waives sovereign immunity for title disputes involving real property in which the United States claims an interest, it expressly reserves sovereign immunity in disputes involving lands held in trust for Indian tribes. 28 U.S.C. § 2409a. Under this exception, sovereign immunity applies if the United States "has a colorable claim and has chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians." *Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987). In this case, the government has elected to assert sovereign immunity. Thus, the only question is whether the government has a colorable claim to the property, or as we have also described it, whether "the government had some rationale for its claim." *Alaska-Albert*, 38 F.3d at 1076.

It is the Plaintiffs' burden to prove that the district court had subject matter jurisdiction to entertain their QTA action. *Thompson v. McCombe*, 99 F.3d 352,

353 (9th Cir. 1996). They failed to meet this burden. Plaintiffs' primary argument is that the United States acquired the property at issue as a sovereign, and not as trustee. Regardless of the true status of the property, under the QTA, trust land is "land the title to which is held in trust by the United States for an individual Indian or a tribe." 25 C.F.R. § 151.2(d). The Indian Reorganization Act of 1934 provided the Secretary of Interior with direct authority to acquire land in trust for Indians. 25 U.S.C. § 465. Prior to that enactment, the United States proclaimed its authority to hold title to lands for the benefit of the Indians. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). As we previously have noted, Congress enacted the Indian land exception because of the "federal government's trust responsibility for Indian lands [which resulted from] solemn obligations entered into by the United States government. The federal government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements." *Alaska-Albert*, 38 F.3d at 1073 (citing H.R.Rep. No. 1559, 92nd Cong., 2d Sess., reprinted in 1972 U.S.C.C.A.N. 4556-57). Thus, when the United States acquires real property in trust for a tribe, it holds the actual title and need not affirmatively set forth the trust status in the document of record and it can claim the easement is held in trust even if such designation does not appear on the title. Cf. *United States v. McGowan*, 302 U.S.

535, 538-39 (1938); *see also Navajo Tribe of Indians v. United States*, 624 F.2d 981, 987 (Ct. Cl. 1980).

In this case, although the easement did not designate title as held in trust, it was recorded by the Bureau of Indian Affairs, and Plaintiffs' predecessor in interest was aware that it was acquired for the assistance of the Dry Creek Rancheria Band of Pomo Indians. For almost half a century, the Bureau of Indian Affairs has claimed the easement was owned in trust with title vested in the United States and has continued to claim it in trust for the benefit of the Dry Creek Rancheria Band of Pomo Indians. The United States held title to the easement with the right to enter, improve and maintain the roadway, and it has since been maintained as part of the Bureau of Indian Affairs road system, not for its own purposes but for the benefit of the Rancheria Indians. Plaintiffs offer nothing to indicate otherwise.

For these reasons, while some doubt exists as to the true status of the easement, the district court correctly concluded that the United States had asserted a colorable claim that the easement is held in trust, within the meaning of the QTA, for the Dry Creek Rancheria Band of Pomo Indians. Thus, sovereign immunity bars the instant action "whether the government is right or wrong."

*Wildman*, 827 F.2d at 1309. Given the sovereign immunity bar, we need not address the other issues raised by Plaintiffs.

**AFFIRMED.**



RANCHERIA

338-105

12-3-15

\$2.00 - I. R. Stp. Cd., Nov. 13/15

(Office of Indian Affairs Received Nov. 22, 1915 126169)

(Office of Indian Affairs Received Jun-8-1915 64238)

THIS INDENTURE, Made the First day of June in the year of our Lord one thousand nine hundred and fifteen,

BETWEEN C. H. WILSON and LENORA WILSON, (his wife) of the County of Sonoma, State of California, the parties of the first part and the UNITED STATES OF AMERICA, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of EIGHTEEN HUNDRED SEVENTY-FIVE (1875) Dollars gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm, unto the said party of the second part, and to its assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the County of Sonoma, State of California, and bounded and particularly described as follows, to wit:-

Beginning at a post, station #4 of the survey of the Sotoyome Rancho, Sonoma County, California, being also a station, the end of the 113th, course of the survey of the Caslamayomi Rancho, Sonoma County, California, situated in Township Ten (10) North, Range Nine (9) West, Mount Diablo Meridian, thence following said grant line North 48° West 27.60 chains to a stake, marked and inscribed R. S. No XVII, being the corner between the lands of Sam. S. Cohen and C. H. Wilson, (formerly Geo. W. Benjamin) thence following the south boundary line of the land of said Sam. S. Cohen North 48° East 2.17 chains to a stake, thence North 64° East 14.00 chains to a stake, thence South 70½° East 25.60 chains to a stake, thence leaving aforesaid south boundary line South 11° 51' East 30.00 chains to a stake; driven in the ground in the center of the old Geyser Toll Road, thence following said center South 64½° West 3.16 chains; thence South 44½° West 4.00 chains; thence South 17° West 2.52 chains to a stake, driven in the ground, in the aforesaid grant line, thence following said grant line, being the 114th course of the survey of the "Caslamayomi Rancho", North 35½° West 12.20 chains to the place of beginning, containing seventy-five (75) acres of land, more or less.

Being a portion of the same land conveyed to Chas. A. Gearing by Geo. W. Benjamin, by Deed dated March 28, 1891, and recorded in Vol. 130 of Deeds, page 513, Sonoma County Records, (566.99 acres.)

TOGETHER with the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and also all their estate, right, title and interest, at law and equity therein or thereto, including —

TO HAVE AND TO HOLD, the same to the said UNITED STATES OF AMERICA and its assigns forever; and they do covenant with the said UNITED STATES OF AMERICA, and its legal representatives forever, that the said real estate is free from all incumbrances, and that they will and their heirs, executors and administrators shall WARRANT AND DEFEND the same to the said UNITED STATES OF AMERICA, and its assigns forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of) C. H. Wilson.

(SEAL)

Lenora Wilson.

(SEAL)

J. T. Coffman.

B. Luce.

a Notary Public in and for said County of Sonoma, personally appeared C. H. WILSON and LENORA WILSON, his wife, known to me to be the persons described in, whose names are subscribed to, and who executed the within instrument, and duly acknowledged to me that they executed the same.

WITNESS my hand and Official Seal, the day and year in this certificate first above written.

J. T. Coffman.

(SEAL)

Notary Public, in and for the County of Sonoma, State of California.

My Commission expires February 6, 1919.

Recorded at the request of GRANTEE, Dec. 3, 1915 at 3 o'clock, P. M., in Vol. 338 of Deeds, Page 205, Sonoma County Records.

F. G. Nagle, Recorder.

By R. G. Nagle, Deputy Recorder. *h*

\$1.20 Paid.

THIS INDENTURE, Made this 20th day of November, in the year of our Lord, one thousand nine hundred and fifteen (1915),

BETWEEN VICTOR SEAFIELD GRANT, ( an unmarried man), of the City and County of San Francisco, State of California, party of the first part, and Mrs. ROSE LOIS CROWE, ( an unmarried woman), of the same place aforesaid, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), Gold Coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain and sell, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, all those certain lots, pieces or parcels of land, situate, lying and being in the County of Sonoma, State of California, and located in the Northwest quarter of Section Twenty-seven (27), Township Seven (7), North Range Ten (10) West, M.D.M., and known as Camp Meeker, as per map on file in the office of Sonoma County records, said parcels of land being more particularly described as follows:-

FIRST: Lot No. 172 on said Map of said Camp Meeker, save and except that portion of about five (5) feet frontage, of a uniform depth of said lot, heretofore conveyed by Ida Cutlar to Mabel L. Rigby, of Oakland, California, as referred to in a certain deed between the above named parties, executed April 11, 1904, recorded May 6, 1904, in Book 213 of Deeds, at page 7 thereof, Sonoma County records.

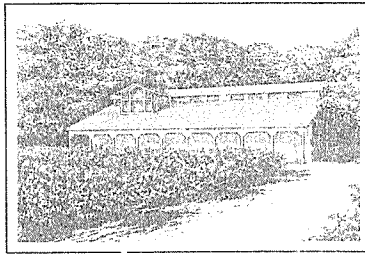
SECOND: Lot 173 on said Map of said Camp Meeker

THIRD: All that portion of Lot 174 on said Map of said Camp Meeker, described as follows:-

BEGINNING at the Northeast corner of said Lot No. 174; thence running thence (3) feet in a Southwesterly course; thence running Southeast to the Southeast corner of said Lot No. 174; thence Northwest along the line of said Lot No. 174 to the point of beginning.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversions and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances,



022

## HAFNER VINEYARD

September 29, 2006

Mr. John Tinger  
US Environmental Protection Agency  
75 Hawthorne Street  
San Francisco CA 94105-3901

Dear Mr. Tinger,

The environment cannot be protected without clearly defined limitations on its use. Enforcing those limitations is effective only when based on verifiable information supplied by frequent monitoring.

The Proposed/Draft USEPA NPDES Permit (CA 0005241), Dry Creek Rancheria Band of Pomo Indians for the River Rock Casino fails to provide even the most minimal public health protection of the Russian River's water in Alexander Valley and downstream to the Pacific Ocean, the drinking water for 700,000 people.

The many failures of your agency's proposed casino permit are listed in letters to the EPA by the Sonoma County Board of Supervisors, County Water Agency, County Counsel's Office and Board of the Alexander Valley Association, among others.

For me just three points in the EPA's proposed casino permit make a mockery of the agency's assignment to protect the environment:

+++The EPA would require no testing of the temperature of the treated sewage the casino wants to pump into a creek that flows to the river.

+++The EPA would require testing the treated sewage for acute and chronic toxicity only once every 24 months.

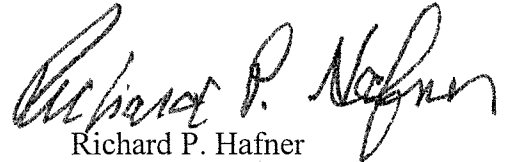
+++The EPA would require testing the treated sewage for priority pollutants only once every 24 months.

As if its failure to set conditions to protect our environment is not enough, the agency approves the casino's dumping of its treated sewage on the vineyards of the casino's neighbors. It does that by failing to set conditions in the permit that would control the casino's dumping of its treated sewage off the tribe's property. There is no issue of sovereign immunity here when the proposed sewage disposal is off tribal trust lands.

Hafner page 2

To provide the environmental protection as it is charged to do, the EPA must provide more time to bring forth all relevant information on its proposed permit, and that requires an Environmental Impact Study. And the agency must provide time for public discussion of that information.

The permit as drafted makes a travesty of the agency's assignment to protect the environment.



Richard P. Hafner

September 18, 2006

John Tinger  
USEPA Region 9  
75 Hawthorne Street  
San Francisco, CA. 94105

Re: NPDES Permit No. CA.0005241

Dear Mr. Tinger:

This is a copy of my notes from the public hearing held in Geyserville.

The Russian River is and has been the life line for the Sonoma County for many, many years. Now because of Santa Rose and other cities and industries who discharge into the Russian River, it is rapidly becoming the LEACH LINE for Sonoma County. Any time someone needs to get rid of waste water they immediately look to the Russian River. This proposed Waste Water Discharge Permit is not a small issue. This discharge affects not only the local Alexander Valley people but all in Sonoma County from the discharge point to the Pacific Ocean, people who rely on the Russian River water for farming, recreation and drinking. The questions and concerns we are bringing up are not trivial but very legitimate. To take some additional time to develop the information and engineering calculations, to evaluate this information and to have additional public hearings would be well worth the effort. We are requesting at least one additional public hearing before any decision is reached regarding the issuance of this new waste water discharge permit into the Russian River.

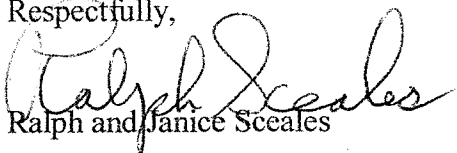
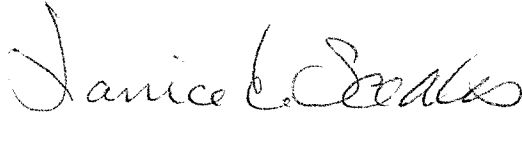
If this Waste Water Discharge Permit is issued, we are concerned how all the rules and regulations will be monitored. The NCRWQCB has an excellent staff of water quality engineers and technical people stationed here in Sonoma County. They routinely provide such service for the Russian River Basin for all others who have discharge permit. The USEPA is based in San Francisco CA., and I am not certain that you would have qualified staff or the time to properly monitor this permit. This is not meant to be a put down of the USEPA but I believe I am just stating the reality of this situation. Because of this we suggest or strongly request that the duties of monitoring this permit be delegated to the NCRWQCB. This would include the receipt of all the reports generated by the applicant, the testing of the water at the discharge points, the inspection of the water treatment facilities and all other regulatory duties.

At one time we thought that there was a moratorium on any new waste water being discharged into the Russian River. We have since found that this not the case but all NEW permits to discharged into the Russian River would fall into a more restrictive application process. We do not know what technical data was used in the assessment of this proposal. If there is an EIR or EIS done for this project we have not seen it. If the applicant is using data created from a previous project, we believe that this is absolutely inappropriate. Since this is clearly a new discharge into the Russian River, we firmly

believe that it should be treated like any other NEW application to dump waste water into the Russian River which might require an EIR or an NEPA analysis.

There have been some discussions about the need to develop better relations and trust between the River Rock Casino and the Alexander Valley Association. This seems to me an opportunity for the River Rock Casino to listen to what their neighbors are saying and rather than bulldozing ahead, take the additional time to development the requested information to assure everybody that the system will properly function, that all rules and regulations are followed and that no private party's interest are being pushed aside. Now that would be the start of a good neighbor.

Respectfully,

   
Ralph and Janice Scales

## Comment Form

Public Hearing September 7, 2006, Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name: FARRY GRANZOTTO  
P.O. BOX 1005  
GEYSERVILLE, CA 95441

Affiliation: \_\_\_\_\_

Comments:

A PERMIT TO DISCHARGE 120K GALLONS  
A DAY WOULD IMPLY WELL WATER OF THAT  
AMOUNT OR MORE. WILL THAT AFFECT AVAILABLE  
WELL WATER FOR OTHERS? ARE THERE  
MITIGATIONS FOR THAT.

*F. Granotto*

## Comment Form

Public Hearing September 7, 2006, Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name: Alvin Cadd  
3845 Hwy 128  
Geyserville Ca  
95441

Affiliation: Russian River Property Owners Association

Comments:

This application to discharge treated  
wastewater into the waters of the  
U.S. is partially inaccurate, the main  
stream runs dry even in the winter  
between storms. Part of the time  
if this permit is granted it will  
be 100% wastewater percolating into  
the neighbors private property.  
How can you allow this?



## Comment Form

Public Hearing September 7, 2006. Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name:

John Alden  
8037 Dry Creek Rd  
Geyserville CA 95441

Affiliation:

Reactor

Comments:

Both oak trees & grape vines do not like "wet feet" (saturated soil) during the summer. If stress or oak root fungus is found in the oak trees or vines from the additional discharge in the A1-P1 basin - will it be considered a nuisance requiring the reduction in flows discharged into the basin?

## Comment Form

Public Hearing September 7, 2006, Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name: Phil Wright  
8979 Conde Ln  
Windsor, CA.

Affiliation: Real Estate Developer

Comments:

In favor of this permit  
The Tribe should be treated as fairly  
as the City of Healdsburg Windsor or  
Santa Rosa and given the same opportunity  
to discharge into the Russian River as  
the cities are given with the same  
requirements

## Comment Form

Public Hearing September 7, 2006, Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name:

Hala Alshahwany

Affiliation:

Nineveh Vineyard

Comments:

I strongly oppose approving this permit  
to the Dry Creek Rancheria. There is a  
great chance for increase of hard to detect  
pollutants (hormonal and such) that will  
affect the quality of water on which  
humans, animals, plants (wild & planted)  
depend heavily.

Please stop any further deterioration  
of the water quality in Sonoma County.

Sincerely,

Hala Alshahwany

# Comment Form

Public Hearing September 7, 2006, Geyserville, CA  
Proposed NPDES Permit for Dry Creek Rancheria

Please provide your comments regarding the proposed National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater from the Dry Creek Rancheria.

Please place this sheet in the comment box. Thank you

Name:

CRAIG ENYART  
P.O. BOX 1754  
HEALDSBURG, CA.  
95443

Affiliation:

ANGA RESIDENT

Comments:

I STRONGLY OPPOSE THIS  
NPDES PERMIT APPLICATION.

9555 Hwy 128  
Healdsburg Ca  
95448

Sept. 27, 2006

030

To the US Environmental Protection Agency  
Dear Sirs.

I am writing to protest the discharge of sewage plan proposed by the River Rock Casino, in Geyserville, Calif. This plan is an outrageous violation of private property rights, and a contamination of ground water, domestic wells, and the Russian River. We who are neighbors feel violated. We request additional hearings and an opportunity to present the negative and additional information

that would illustrate the down-  
right dangers of this plan. —  
it is an open ditch (a la a third  
world country) — self monitoring  
by the Casino (the fox guarding  
the hen house) and many other  
totally inadequate provisions

Please do not allow the  
Casino, with its shameful  
disregard of community  
concerns and environmental  
protection to proceed.

Thank you,

Marjorie and  
Philip Lilienthal

031

David L. Mahoney  
121 Jordan Avenue  
San Francisco, CA 94118

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

I am writing to request the EPA require a complete Environmental Impact Study (EIS) before any permit is issued to River Rock Casino for the purposes of discharging treated sewage above their current level. The Casino should be treated in the same manner that any other applicant would be, i.e., be required to identify and correct any potential problems *before* they occur. In addition, the public should be given time to study the EIS after it is completed as well as the ability to discuss it at a public hearing following a written comment period.

There are many reasons to believe that such a study is necessary. The State Water Quality Control board has already stated that the use of the stream called "A1" would be in violation of the Russian River Basin Plan as it is an isolated drainage. In addition, the discharge called "P1" is unlikely to be able to accommodate the anticipated discharge, resulting in erosion and other environmental impacts to the adjacent property and fish habitat. Both of these discharges, if used at the level that the currently requested permit would allow, could create severe negative impacts to private property (e.g., groundwater/domestic well contamination) without legal jurisdiction to protect that property. Finally, there is not adequate independent monitoring and testing of the effluent for toxicity, temperature, etc. required by the permit as currently requested.

The EPA is the only organization that can effectively assess the potential environmental impacts of the proposed discharge levels, determine whether the risks can be adequately managed, and reduce the permitted discharges to an acceptable level and/or put in place an adequate monitoring and testing protocol.

I will look forward to your response.

Sincerely yours,



David Mahoney

032

COOPER RANCH PARTNERSHIP  
7001 QUARTZ AVENUE  
WINNETKA, CA 91306  
(818) 348-0082  
DOEDON@AOL.COM

Sept. 30, 2006

U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne St.  
San Francisco, CA 94105-3901  
Attn: John Tinger

**RE: Permit for River Rock Casino's wastewater discharge**

Dear Mr. Tinger:

Our family has owned 100 home and vineyard acres in the Alexander Valley since 1942, now eight miles from the River Rock Casino, at 15790 Chalk Hill Road at Highway 128 in Healdsburg. We write to strongly urge you to carefully protect our small and pristine Valley and Russian River from the possible irrevocable damage from the Casino's commercial waste in our neighborhood.

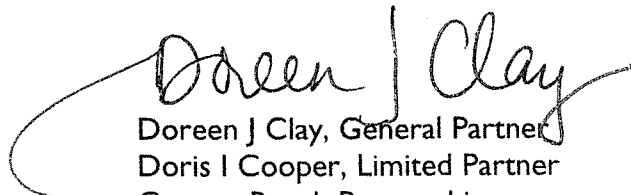
We are horrified that commercial waste water might be allowed to run into **private** vineyard land and into the **small** waterways of our Russian River basin. How can this even be legal? Have you seen how small our waterways are and how huge this Casino aspires to be?

We survive from wells on our property that could possibly be contaminated. We battle having enough water and battle erosion as well. The wine that is made from ours and our neighbors' vineyards depends first and foremost on the healthy land that sustains it.

**Please protect our tiny valley, our wildlife, our homes and our livelihoods by conducting a complete and thorough Environmental Impact Study prior to issuing any permit.** Please seriously address every issue posed by the Alexander Valley Association, and ensure that the River Rock Casino comply to California codes and not violate the Alexander Valley.

Thank you for your attention. We are depending on you.

Sincerely,

  
Doreen J Clay, General Partner  
Doris I Cooper, Limited Partner  
Cooper Ranch Partnership

Cc: Candy Cadd, President, AVA



034

Winn C. Ellis  
121 Jordan Avenue  
San Francisco, CA 94118

Mr. John Tinger  
U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Dear Mr. Tinger:

I am writing to request the EPA require a complete Environmental Impact Study (EIS) before any permit is issued to River Rock Casino for the purposes of discharging treated sewage above their current level. The Casino should be treated in the same manner that any other applicant would be, i.e., be required to identify and correct any potential problems *before* they occur. In addition, the public should be given time to study the EIS after it is completed as well as the ability to discuss it at a public hearing following a written comment period.

There are many reasons to believe that such a study is necessary. The State Water Quality Control board has already stated that the use of the stream called "A1" would be in violation of the Russian River Basin Plan as it is an isolated drainage. In addition, the discharge called "P1" is unlikely to be able to accommodate the anticipated discharge, resulting in erosion and other environmental impacts to the adjacent property and fish habitat. Both of these discharges, if used at the level that the currently requested permit would allow, could create severe negative impacts to private property (e.g., groundwater/domestic well contamination) without legal jurisdiction to protect that property. Finally, there is not adequate independent monitoring and testing of the effluent for toxicity, temperature, etc. required by the permit as currently requested.

The EPA is the only organization that can effectively assess the potential environmental impacts of the proposed discharge levels, determine whether the risks can be adequately managed, and reduce the permitted discharges to an acceptable level and/or put in place an adequate monitoring and testing protocol.

I will look forward to your response.

Sincerely yours,



Winn C. Ellis



Marjorie Montaldo

Attn: Cheryl Pitt

Healdsburg, CA 95448

707-433-4038

e-mail

Marjorie@comcast.net

35

Received after  
Close of Comment  
Period

O.S. post office  
date: 10/5/06

10/05/2006.

Suesan Saucerman,  
US EPA,  
75 Hawthorne St  
San Francisco, CA 94105.

Dear Ms Saucerman:

I am concerned about the wastewater discharge  
into the Russian River because when visiting foreign countries  
and observing the polluted waters in rivers there, I was so proud  
to come home to the United States and witness the clear water  
here for our river users.

Therefore, I request that federal officials conduct  
a more thorough review of Healdsburg River Rock Casino's  
discharge permit.

Respectfully submitted,

Marjorie Montaldo

October 7, 2006

413 Greens Drive,  
Healdsburg, California, 95448

Suesan Saucerman,  
U.S. EPA,  
75 Hawthorne Street,  
San Francisco, CA, 94105

Dear Ms Saucerman,

Re: River Rock Casino wastewater discharge permit,

I am a resident of Healdsburg, CA. Part of our drinking water supply comes from the Russian River, downstream from the proposed discharge of the Casino's wastewater.

The wastewater discharge permit should be subject to a very thorough Environmental Impact review. The permit must require that the negative impacts be eliminated and that the agricultural land and downstream drinking water supply be protected by frequent and thorough monitoring.

The environment isn't defined by property lines or borders. We must always be realistic about that.

Sincerely,

*Roland Hartsough*  
Roland Hartsough



SIERRA  
CLUB

FOUNDED 1892

*Received after close of business period  
U.S. Postal Service date: 10/5/06*

Sonoma Group  
Redwood Chapter  
55A Ridgway Avenue, Santa Rosa, CA  
P.O. Box 466, Santa Rosa CA 95402  
(707) 544-7651  
Fax (707) 544-9861  
Email: [songrp@sonic.net](mailto:songrp@sonic.net)  
[www.redwood.sierraclub.org/sonoma/](http://www.redwood.sierraclub.org/sonoma/)

37

U.S. Environmental Protection Agency  
Region IX, WTR-5  
75 Hawthorne Street  
San Francisco, CA 94105-3901

September 30, 2006

Attn: John Tinger

Subject: River Rock Casino  
Preliminary Wastewater Discharge Permit

River Rock Casino is planning a massive expansion in the rural and pristine area where they have already scarred the scenic landscape, crowded country roads far beyond their safe capacity and introduced intrusive elements into this bucolic environment.

They now plan to add to the environmental concerns by developments, which would greatly increase the discharge of sewage into the ditches and streams in their watershed.

We understand the Casino Operators, the Dry Creek Pomo Rancheria, intend to triple the wastewater output from their proposed expanded treatment plant. Discharges would increase from approximately 40,000 gallons a day to 112,000 gallons a day, and discharges on weekends would peak at 200,000 gallons per day.

The sewage discharges would flow into two separate streams referred to as A1 and P1.

A1 does not flow into the Russian River. During the summer months treated sewage will be discharged into this drainage and allowed to leach into the soil, possibly contaminating groundwater. This stream flows across 3 separate private properties and could convey unwanted nutrients and dangerous heavy metals into croplands.

P1 is an unnamed stream which flows from the Rancheria onto private property and then into the Russian River. This stream is the habitat for steelhead trout and the treated sewage could potentially contaminate groundwater and domestic wells.

As a result of our concerns, we are requesting the EPA to require a complete EIS (Environmental Impact Study) before any permit is issued. With any other applicant this study would be required to help identify and correct potential problems before they occur.

The discharge called A1 should be removed as a receiving stream. The State Water Quality Control Board has stated that the use of this stream is in violation of the Russian River Basin Plan because it is an isolated drainage area, and brings negative impacts to private property without legal jurisdiction to protect property.

The Discharge referred to as P1 (the creek that runs along the casino access road) cannot physically accommodate the anticipated discharge. This would result in erosion and other environmental impacts to the adjacent property and fish habitat. It is also unknown if the discharge into P1 will contaminate ground water or several domestic water wells located close to this stream. These problems must be corrected.

The State Water Quality Control Board has stated that the use of this stream is in violation of the Russian River Basin Plan because it is an isolated drainage area, and brings negative impacts to private property without legal jurisdiction to protect private property.

This application should be treated in the same manner as any other, and it would be the only time that this type of study has been done by the casino.

After this study is completed the public should be given time to study it and have the ability to comment at a second public hearing and have a written comment period.

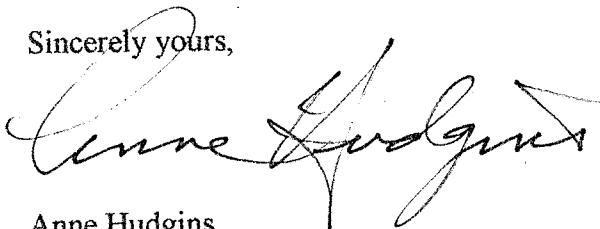
There is a need for more information and analysis to be made available to the public for review.

We believe the Casino and the Rancheria should follow state water quality standards, provide more monitoring of the treatment plant, and should develop an emergency plan

The EPA should revise the permit to require frequent and independent monitoring and testing of effluent for toxicity, and temperature and should be circulated for public review.

Finally we are requesting that the USEPA revise the proposed permit and subject it to additional public review and comment.

Sincerely yours,



Anne Hudgins  
Chair, Sierra Club Sonoma Group



Leonard L. Holt  
Chair, Sierra Club  
Sonoma Group Water Committee

CC:

State Water Quality Control Board  
Sonoma County Board of Supervisors